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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-91-301]

Pistachio Nuts in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Pistachio Nuts in the Shell. The final rule adds a fourth grade, U.S. No. 3, to the present standard. The Western Pistachio Association, a trade association representing a majority of the pistachio nut growers and packers in the United States, has requested the USDA to make these changes to bring the standards in line with current marketing trends. These changes would improve marketing information and communication between shippers and receivers of pistachio nuts in the shell. The Agricultural Marketing Service (AMS) has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: February 14, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This revision of U.S. Standards for Grades of Pistachio Nuts in the Shell will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The proposed rule, United States Standards for Grades of Pistachio Nuts in the Shell (7 CFR 51.2540-51.2546), was published in the **Federal Register** on May 3, 1991 (56 FR 20373-20374). A typographical error in Table II under U.S. No. 3 (a) damage was published as "80" percent. A subsequent issue (56 FR 23956 dated May 24, 1991) published the correct tolerance of 8 percent. The proposal was developed at the request of the Western Pistachio Association, a trade association representing the majority of pistachio growers and handlers in the United States.

The growers and shippers represented by the Western Pistachio Association requested this revision because the previous standards did not, in their judgment, reflect current marketing practices. They believe that this final rule would give the industry grade standards that would reflect today's modern marketing and packaging methods.

The standards are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et* seq.). Industry representatives requested that the standards be revised to add a new grade, U.S. No. 3, to the existing standards. According to the Western Pistachio Association, the addition of a fourth grade will allow the industry to maintain the integrity and quality of the edible kernels and still supply a product to the market having more shell staining present. Freshly harvested pistachio nuts normally have fleshy hull material attached to the shell. If this hull material is not removed promptly following harvest, the shells may become discolored or stained by tannins and oils leaching from the hulls. Although this staining may affect the appearance of the shell, it is not believed to cause or indicate any adverse effect on the kernel.

In addition, two other external defect tolerances will also be increased for the new U.S. No. 3 grade. These are (1) Non-split and not split on suture, and, (2) Damage by other means. All other tolerances in Table I, as well as those listed in Tables II and III will remain the same as those presently designated for the U.S. No. 2 grade. This allows lots which may not be marketed through normal channels only due to external appearances to be marketed with the edible kernel being the focal point of the grade.

The 60-day comment period ended July 2, 1991 and a total of six comments were received concerning the proposal. Three comments from packers/distributors were opposed to the proposal, two were supportive of the proposal, and one was from the USDA, Agricultural Research Service (ARS) which was neither for or against the proposal.

Of the three comments opposed to the proposed U.S. No. 3 grade, it is generally the opinion of these commentors that, "Adding a fourth grade * * * will not benefit the grower or the shipper. In fact this revision would only cause disruption and quality cheating in the market, which in turn would cause less profits for both the grower and shipper." One comment reported, "There have been too many complaints from the retail customers, retailers, and repackers of pistachio in shell nuts, therefore, there is no sound reasoning in adding another grade."

AMS has considered these opposing comments and disagrees. The actual consumed portion of in the shell pistachio nuts is the kernel or nutmeat. No evidence has been shown to indicate that stained shells also indicate or cause any undesirable kernel characteristics. Furthermore, this grade would also be beneficial in marketing pistachios. The primary reason that pistachios were originally dyed with coloring was to cover the stained shell. The standards may be applied to pistachio nuts in a "natural, dyed, raw, roasted, or salted state." Many of the dyed pistachios already possess shell staining which is allowed in the new U.S. No. 3 grade. This new grade would provide a

description of a product which is already being marketed but may be dyed in order to make a U.S. grade.

The U.S. Standards are voluntary. Therefore, those in the industry who are opposed to the U.S. No. 3 grade for pistachios need not accept or use it. However, by incorporating this grade into the present standard those who may wish to use this grade will be able to do so. In addition, the standards are not intended to hinder marketing but rather be used as a descriptive tool to expedite and encourage trading.

AMS develops and improves standards of quality, condition, grade, and packaging to enhance the marketing of agricultural commodities by fostering consistency in commercial practices. The Agency has determined this final rule will enhance the marketing of pistachio nuts in the shell. The provisions of this final rule are the same as those in the proposed rule except that a metric conversion table is added.

Accordingly this revision shall become effective 30 days after the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is amended to read as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In subpart—United States Standards for Grades of Pistachio Nuts in the Shell § 51.2541 is amended by revising the introductory text to read as follows:

§ 51.2541 Grades.

"U.S. Fancy," "U.S. No. 1," "U.S. No. 2," and "U.S. No. 3" consist of pistachio nuts in the shell which meet the following requirements.

* * * * *

3. Section 51.2542 Tolerances is amended by revising Tables I, II, and III in paragraph (a) to read as follows:

§ 51.2542 Tolerances.

(a) * * *

TABLE I

Factor	U.S. fancy	U.S. No. 1	U.S. No. 2	U.S. No. 3
External (shell) defects (tolerances by weight)	Percent	Percent	Percent	Percent
(a) Non-split and not split on suture	2	3	6	10
(1) Non-split included in (a)	1	2	4	4
(b) Adhering hull material	1	1	2	2
(c) Light stained	7	12	20	35
(1) Dark stained, included in (c)	2	3	4	6
(d) Damage by other means	1	1	1	2
(e) Less than 26/64 inch in diameter:				
(1) Small size	5	5	5	5
(2) Medium, Large, Extra Large sizes	1	1	1	1

TABLE II

Factor	U.S. fancy	U.S. No. 1	U.S. No. 2	U.S. No. 3
Internal (kernel) defects (tolerances by weight)	Percent	Percent	Percent	Percent
(a) Damage	3	6	8	8
(b) Serious Damage	3	4	5	5
(1) Insect damage, included in (b)	1	2	3	3
Total internal defects shall not exceed	5	9	10	10

TABLE III

Factor	U.S. fancy	U.S. No. 1	U.S. No. 2	U.S. No. 3
Other defects (tolerances by weight)	Percent	Percent	Percent	Percent
(a) Shell pieces and blanks	1	1	2	2
(b) Foreign material (No glass, metal, or live insects shall be permitted	.25	.25	.50	.50

TABLE III—Continued

Factor	U.S. fancy	U.S. No. 1	U.S. No. 2	U.S. No. 3
Other defects (tolerances by weight)	Percent	Percent	Percent	Percent
(c) Particles and dust	.25	.25	.25	.25

* * * * *

4. Section 51.2547 Metric Conversion Table is added to read as follows:

§ 51.2547 Metric Conversion Table.

Inches	Millimeters
5/64	1.98
18/1000	0.46
1/4	6.35
26/64	10.32

Ounces	Grams
1	28.35
2	56.70

Dated: January 10, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-1055 Filed 1-14-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1032

[DA-91-022]

Milk in the Southern Illinois—Eastern Missouri Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Southern Illinois—Eastern Missouri Federal milk marketing order for the months of December 1991 and January 1992. The action reduces the shipping standard for pool supply plants operated by cooperative associations. The action was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that operates supply plants and represents producers who supply the market. This action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist.

USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed suspension: Issued December 19, 1991; published December 26, 1991 (56 FR 66798).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area.

Notice of proposed rulemaking was published in the Federal Register on December 26, 1991 (56 FR 66798) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment supporting this action was received.

After consideration of all relevant material, including the proposal in the notice, the comment received and other available information, it is hereby found and determined that for the months of December 1991 and January 1992 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at".

Statement of Consideration

This action suspends certain provisions of the order for the months of December 1991 and January 1992. The action reduces the shipping standard for pool supply plants operated by cooperative associations.

Currently the order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides a monthly shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperative's total milk supply during the preceding months of September through August is received at distributing plants. The suspension results in reducing the shipping standard for a cooperative association supply plant to 25 percent of receipts during December 1991 and January 1992.

The action was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that operates supply plants under the order and represents producers who supply the market. Prairie Farms contends that the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants. Mid America Dairymen, Inc., a cooperative association that represents producers who supply the market, supported the suspension in comments.

A reduction in the fluid milk requirement of the market is a result of the recent loss of two customers by Prairie Farms to competitors regulated under other Federal orders, and the sluggish sales in the area due to layoffs in major defense, tire, and heavy equipment manufacturing firms. As a result, there is an abatement in the amount of supplemental supply plant milk required of cooperative associations to meet the fluid milk needs of the market.

Due to this structural change in the market, the suspension is necessary to reduce the shipping standard to 25 percent of receipts during December 1991 and January 1992 for cooperative associations. Absent a suspension, costly and inefficient movements of milk would have to be made in order to pool supply plants and the milk of producers who have historically supplied the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1032.7(b) of the Southern Illinois-Eastern Missouri order are hereby suspended for the months of December 1991 and January 1992.

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1032.7 [Temporarily suspended in part]

2. In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at" are hereby suspended for the months of December 1991 and January 1992.

Signed at Washington, DC, on: January 8, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–1054 Filed 1–14–92; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Rural Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Guaranteed Rural Housing Loans

regulation. This action is taken to implement the provisions of the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1992" (Agriculture Appropriations Act, 1992) which revises the Housing Act of 1949 (42 U.S.C. 1472), as amended with regard to the Guaranteed Rural Housing Program. The intended effect of this action is to remove a requirement that dwellings financed with Guaranteed Rural Housing Loans be more than 25 miles from an urban area or densely populated area.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Officer, Farmers Home Administration, USDA, room 5334–S, South Agriculture Building, 14th and Independence SW., Washington DC 20250, Telephone (202) 720–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions or significant adverse effects on competition, employment, productivity, innovation or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is the policy of this Department to publish most actions for public comment. This action, however, is clearly defined by a change in the law, therefore it has been determined that this change should be implemented as a final rule.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reason set forth in the final rule related Notice to 7 CFR part 3015. Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Discussion

On October 28, 1991, the President signed the Agriculture Appropriations Act, 1992 which revised the rural area definition for the guaranteed loan program. This revision removes a requirement that dwellings financed with Guaranteed Rural Housing Loans be more than 25 miles from an urban area or densely populated area.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.410, Rural Housing Loans.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart D—Rural Housing Program Loans

2. Section 1980.311 of subpart D is revised to read as follows:

§ 1980.311 Rural area designation.

The State Director is responsible for establishing rural area boundaries in accordance with the provisions of § 1944.10 of subpart A of part 1944 of this chapter. Lenders should utilize rural area designation maps supplied by FmHA to assure loans are made within eligible rural areas. FmHA will maintain current county maps showing ineligible areas in the District and County Offices. These maps will be made available to the public on request.

Dated: November 18, 1991.

David T. Chen,

Acting Administrator, Farmers Home Administration.

[FR Doc. 92–989 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

RIN 3150–AE10

Reorganization of the Office of Governmental and Public Affairs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect the Commission's decision to abolish the Office of Governmental and Public Affairs and to reassign its subordinate offices and functions. This final rule is necessary to inform the public of organizational changes within the NRC.

EFFECTIVE DATE: The rule will become effective January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: On October 23, 1991, the Commission announced its decision to abolish the Office of Governmental and Public Affairs and reassign its subordinate offices and functions. In the reorganization, the functions and personnel of the Office of State Programs will be assigned to the Executive Director for Operations and will be aligned as a separate office reporting to the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

The functions and personnel of the Office of International Programs will be aligned as a separate office reporting to the Commission. The Offices of Congressional Affairs and Public Affairs will continue to report to the Chairman of the Commission.

Because these are amendments dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because these amendments are of a minor and administrative nature, dealing with the agency's reorganization.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environment assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

List of Subjects in 10 CFR Part 1

Organization and functions (Government agencies).

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 1.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for part 1 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 1.3 [Amended]

2. In § 1.3, in paragraph (a), remove the words "Governmental and".

3. § 1.11, paragraphs (c) and (d) are revised to read as follows:

§ 1.11 The Commission.

* * * * *

(c) The following staff units and officials report directly to the Commission: Atomic Safety and Licensing Board Panel, Office of the General Counsel, Office of the Secretary, Office of Commission Appellate Adjudication, Office of Licensing Support System Administrator, Office of International Programs, and other committees and boards which are authorized or established specifically by the Act. The Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste also report directly to the Commission.

(d) The Offices of Congressional Affairs and Public Affairs report directly to the Chairman.

4. New §§ 1.27 and 1.28 are added to read as follows:

§ 1.27 Office of Congressional Affairs.

The Office of Congressional Affairs—

(a) Advises the Chairman, the Commission, and NRC staff on all NRC relations with Congress and the views of Congress toward NRC policies, plans and activities;

(b) Maintains liaison with Congressional committees and members of Congress on matters of interest to NRC;

(c) Serves as primary contact point for all NRC communications with Congress;

(d) Coordinates NRC internal activities with Congress;

(e) Plans, develops, and manages NRC's legislative programs; and

(f) Monitors legislative proposals, bills, and hearings.

§ 1.28 Office of Public Affairs

The Office of Public Affairs—

(a) Develops policies, programs, and procedures for the Chairman's approval for informing the public of NRC activities;

(b) Prepares, clears, and disseminates information to the public and the news media concerning NRC policies, programs, and activities;

(c) Keeps NRC management informed on media coverage of activities of interest to the agency;

(d) Plans, directs, and coordinates the activities of public information staffs located at Regional Offices;

(e) Conducts a cooperative program with schools; and

(f) Carries out assigned activities in the area of consumer affairs.

5. Section 1.29 is revised to read as follows:

§ 1.29 Office of International Programs.

The Office of International Programs—

(a) Advises the Chairman, the Commission, and NRC staff on international issues;

(b) Recommends policies concerning nuclear exports and imports, international safeguards, international physical security, nonproliferation matters, and international cooperation and assistance in nuclear safety and radiation protection;

(c) Plans, develops, and manages international nuclear safety information exchange programs and coordinates international research agreements;

(d) Obtains, evaluates, and uses pertinent information from other NRC and U.S. Government offices in processing nuclear export and import license applications;

(e) Establishes and maintains working relationships with individual countries and international nuclear organizations, as well as other involved U.S. Government agencies; and

(f) Assures that all international activities carried out by the Commission and staff are well coordinated internally and Government-wide and are consistent with NRC and U.S. policies.

§ 1.31 [Amended]

6. In § 1.31, in paragraph (b), add the words "Office of State Programs," between the words, "Office of Personnel," and "and".

7. Section 1.41 is redesignated as § 1.42 and a new § 1.41 is added to read as follows:

§ 1.41 Office of State Programs.

The Office of State Programs—

(a) Plans and directs NRC's program of cooperation and liaison with States, local governments, interstate and Indian Tribe organizations; and coordinates liaison with other Federal Agencies;

(b) Participates in formulation of policies involving NRC/State cooperation and liaison;

(c) Develops and directs administrative and contractual programs for coordinating and integrating Federal and State regulatory activities;

(d) Maintains liaison between NRC and State, interstate, regional, Indian Tribe, and quasi-governmental organizations on regulatory matters;

(e) Promotes NRC visibility and performs general liaison with other Federal Agencies, and keeps NRC management informed of significant developments at other Federal Agencies which affect the NRC;

(f) Monitors nuclear-related State legislative activities;

(g) Directs regulatory activities of State Liaison and State Agreement Officers located in Regional Offices;

(h) Participate in policy matters on State Public Utility Commissions (PUCs);

(i) Administers the State Agreements program in a partnership arrangement with the States;

(j) Develops staff policy and procedures and implementation of the State Agreements program under the provisions of section 274b of the Atomic Energy Act, as amended;

(k) Provides oversight of program of periodic routine reviews of Agreement State programs to determine their adequacy and compatibility as required by section 274j of the Act and other periodic reviews that may be performed to maintain a current level of knowledge of the status of the Agreement State programs;

(l) Provides training to the States as provided by section 274i of the Act and also to NRC staff and staff of the U.S. Navy and U.S. Air Force;

(m) Provides technical assistance to Agreement States;

(n) Maintains an exchange of information with the States;

(o) Conducts negotiations with States expressing an interest in seeking a section 274b Agreement;

(p) Supports, consistent with Commission directives, State efforts to improve regulatory control for radiation safety over radioactive materials not covered by the Act; and

(q) Serves as the NRC liaison to the Conference of Radiation Control Program Directors, Inc. (CRCPD) and coordinates NRC technical support of CRCPD committees.

8. The center heading "Program Offices" is placed before new § 1.42.

Dated at Rockville, Maryland, this 3rd day of January 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-1045 Filed 1-14-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 110, 114

[Notice 1992-1]

Honoraria

AGENCY: Federal Election Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Commission is today publishing technical amendments to its regulations to conform them to the Legislative Branch Appropriations Act, 1992, Public Law No. 102-90, 105 Stat. 447 (1991). Section 6(d) of that Act repealed 2 U.S.C. 441i, which governed the acceptance of honoraria by Senators and officers and employees of the Senate.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971 ("FECA"), as amended, gave the Federal Election Commission jurisdiction over the acceptance of honoraria by all federal officers and employees. Federal Election Campaign Act Amendments of 1979, Public Law No. 96-187, section 105, 93 Stat. 1339, 1354 [redesignating provisions inserted by the Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, section 112, 90 Stat. 475, 486-95) (codified as amended at 2 U.S.C. 441i (1991)).

However, since 1989, the Commission's jurisdiction has been limited to the acceptance of honoraria by Senators and officers and employees of the Senate. Section 601 of the Ethics Reform Act of 1989, Public Law No. 101-194, 103 Stat. 1716, amended 2 U.S.C. 441i to remove the Commission's jurisdiction over honoraria acceptance by other Federal officers and employees, including members of the House of Representatives.

Recently, Congress passed the Legislative Branch Appropriations Act, 1992, Public Law No. 102-90, 105 Stat. 447 (1991). Sections 6(d) and 6(f)(1) of that Act further amend the FECA by repealing 2 U.S.C. 441i as of the effective date of the Act. As a result, the Commission has no jurisdiction over honoraria transactions taking place after August 14, 1991. (The Commission's jurisdiction over honoraria transactions occurring before that date remains intact. *FEC* v. *Wright*, No. 4-91-0542-A, slip op. at 13 (N.D. Tex. Nov. 12, 1991).)

Therefore, the Commission is publishing this Notice to make the necessary technical and conforming amendments to its regulations. The Notice repeals 11 CFR 110.12, the regulatory provision that implements section 441i. It also repeals 11 CFR 100.7(b)(19) and 11 CFR 114.1(a)(2)(iv), two provisions that make reference to 11 CFR 110.12.

Because the amendment is merely technical, it is exempt from the notice and comment requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B). It is also exempt from the legislative review provisions of the FECA. See 2 U.S.C. 438(d). These exemptions allow the amendments to be made effective immediately upon publication in the **Federal Register**. As a result, these amendments are made effective on January 15, 1992.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that only officers and employees of the Federal Government are affected, and therefore, no small entity is affected under the final rule.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Government Employees.

11 CFR Part 114

Elections.

For the reasons set out in the preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

§ 100.7(b)(19) [Removed and Reserved]

2. Section 100.7(b)(19) is removed and reserved.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

§ 110.12 [Removed and Reserved]

4. Section 110.12 is removed and reserved.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

5. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

§ 114.1(a)(2)(iv) [Removed and Reserved]

6. Section 114.1(a)(2)(iv) is removed and reserved.

Dated: January 9, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-1062 Filed 1-14-92; 8:45am]

BILLING CODE 6715-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

Rules, Policies, and Procedures for Corporate Activities

CFR Correction

In title 12 of the Code of Federal Regulations, parts 1 to 199, revised as of January 1, 1991, on page 80, in the first column immediately following § 5.50 (h)(1), paragraphs (h)(1)(i), (ii), (2) and (3) were inadvertently removed. The omitted text should read as follows:

§ 5.50 [Corrected]

* * * * *

(h) * * *

(1) * * *

(i) Notices filed in contemplation of a public tender offer subject to the requirements of the Williams Act Amendments to the Securities Exchange Act of 1934 may be excepted from the public announcement requirement for up to 34 days after the technically complete notice is filed if: (A) The filing person requests such confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with either the Securities and Exchange Commission or the appropriate Federal banking agency, as applicable, will occur within 34 days from the filing of the Notice; and (B) the Office determines, in its discretion, that it is in the public interest to grant such confidential treatment. The public announcement described in paragraph (h) of this section is required upon first publication to security holders or on the 34th day after filing the technically complete Notice, whichever occurs first. The filing person shall send proof of the publication of the announcement to the district office before which the Notice is pending within 10 days of the date of the announcement. In other cases of requests for confidential treatment, the Office will be guided by the presumption that the filing of such Notices should be announced immediately, but may, in its discretion, authorize delayed announcement if the announcement would not be in the public interest.

(ii) Notwithstanding any of the other provisions of paragraph (h) of this section, the Office may, in its discretion, waive the requirement that a public announcement be made in connection with a filing if it determines that such announcement is not in the public interest.

(2) *Release of Summary Information.* In order to facilitate the Office's release of summary information, Part E of the Notice format consists of a summary ("Summary Fact Sheet") which the person subject to the statute and regulation is required to complete as part of the Notice filing. The information provided in the Summary Fact Sheet will be released and made available for public inspection and copying, upon the request of any person, in accordance with the specified time sequence described below. In addition, public announcement of the disposition of the Notice and the consummation date of the transaction, if applicable, will be made in the *Weekly Bulletion* published by the Office.

(i) The instructions to the Summary Fact Sheet portion of the Notice indicate that when the person filing the Notice affirmatively indicates no objection to public release of the information contained in the Summary Fact Sheet, public release normally will be made as soon as practicable after acceptance of the Notice for filing.

(ii) When the Office has not disapproved an acquisition of control within the statutory period (and any extensions thereof), the Office normally will release the information contained in the Summary Fact Sheet upon completion of such acquisition of control.

(iii) When the Office has issued a written disapproval of a proposed acquisition of control, it normally will release the information set forth in the Summary Fact Sheet upon the filing of an appeal with the U.S. Court of Appeals for the appropriate circuit, or upon the expiration of time within which any appeal must be taken.

(iv) When a Notice under the Act is filed, but withdrawn prior to agency action or expiration of the statutory waiting period, the Office normally will not release the Summary Fact Sheet. The filing of the Notice, the identity of the person on whose behalf the Notice was filed and the time frames within which the Notice was to be considered by the Office, normally would have been announced previously.

(v) If the information contained in the Summary Fact Sheet becomes known to members of the public, the Office may release the Summary Fact Sheet in its discretion.

(vi) The information contained in the Notice that is not included in the Summary Fact Sheet will continue to be held confidential by the Office subject to the requirements of the FOIA and other applicable law.

(3) *Private Right of Action.* Nothing contained herein shall create a private right of action on behalf of any person, nor shall any person, including the affected institution, have standing to intervene or otherwise contest the Notice or appear before the Comptroller in the deliberations regarding notices filed under the Act.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 86N-0451]

New Animal Drugs for Use in Animal Feeds; Removal of Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations by removing the interim regulation that provides for certain uses of arsanilic acid and arsanilate sodium in animal feeds. This revision will reflect the current legal status of arsanilic acid and arsanilate sodium for these uses.

DATES: February 14, 1992.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301-295-8724.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 26, 1991 (56 FR 19332), FDA reproposed a rule previously proposed in the **Federal Register** of December 18, 1986 (51 FR 45346) to remove § 558.20 *Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing* (21 CFR 558.20). FDA reproposed the rule once it recognized that several of the uses it had proposed to codify as reflecting approval of new animal drug applications (NADA's) for these uses did not appear to be the subject of approved NADA's. No evidence or comments were received on the 1991 reproposed rule, which requested anyone claiming to hold an approved NADA for arsanilate sodium in swine feed or for arsanilic acid at 0.025 to 0.04 percent in swine feed to submit evidence to substantiate the approval. FDA has concluded that the NADA for arsanilate sodium, NADA 8-966, providing for the use of the new animal drug in medicated feeds for swine, was voluntarily withdrawn at the

request of the sponsor (see 56 FR 19332 and RFS. 1 and 2 of the reproposal). FDA has also concluded that NADA 8–019, providing for the use of arsanilic acid in swine feed was never approved for the 0.025- to 0.04-percent use level, because the application failed to include adequate data to establish that the edible products of swine so treated are safe for human consumption (see FR 19332 and Refs. 2, 3, and 4 to the reproposal). For these reasons and the reasons stated in the preamble the reproposed rule, FDA is removing § 558.20. After the effective date, any Type A medicated article that contains arsanilate sodium or arsanilic acid for use at 0.025 to 0.04 percent in swine feed but that is not the subject of an approved NADA will be in violation of the Federal Food, Drug, and Cosmetic Act and subject to regulatory action, unless covered by a statutorily provided exception to the requirement of an approved application.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Economic Impact

The agency has determined that this final rule does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The final rule does not impose new or different requirements on industry; it merely revises the regulations to reflect the current legal status of arsanilate sodium and arsanilic acid for the uses in question.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.4 is amended by revising paragraph (c) to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(c) The use of Type B and Type C medicated feeds shall conform to the conditions of use provided for in subpart B of this part and in §§ 510.515 and 558.15.

* * * * *

§ 558.20 [Removed]

3. Section 558.20 *Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing* is removed.

Dated: December 23, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1020 Filed 1–14–92; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part O

[AG Order No. 1556–92]

Delegation of Attorney General Authority Under 50 U.S.C. 403h and 8 U.S.C. 1427(f)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend the delegations of authority in § 0.63 of 28 CFR part O to include the Deputy Assistant Attorneys General, Criminal Division, among the individuals who may exercise the Attorney General's authority under 50 U.S.C. 403h to permit the entry of certain aliens into the United States, and under 8 U.S.C. 1427(f) to expedite the naturalization of certain foreign intelligence sources. This delegation is intended to enhance the Criminal Division's ability rapidly and consistently to approve the entry and naturalization of specified qualified aliens.

EFFECTIVE DATE: January 7, 1992.

FOR FURTHER INFORMATION CONTACT: Nicolas D. Mansfield, Trial Attorney, Criminal Division, United States Department of Justice, room 9112, Bond Building, Washington, DC 20530, Telephone: (202) 514–1195.

SUPPLEMENTARY INFORMATION: Section 7 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 403h, confers upon the Attorney General, in conjunction with the Director of Central Intelligence and the Commissioner of Immigration and Naturalization, the authority to permit the entry of certain aliens into the United States for permanent residence, when it is in the interest of the national security of the United States or essential to the furtherance of the national intelligence mission. Section 316(f) of the Immigration and Nationality Act, as amended ("Act"), 8 U.S.C. 1427(f), confers upon the Attorney General, in conjunction with the Director of Central Intelligence and the Commissioner of Immigration, the authority to expedite the naturalization of certain foreign intelligence sources, without regard to the residence and physical presence requirements of section 316 of the Act, if those sources are otherwise eligible for naturalization and have made extraordinary contributions to the national security of the United States or to the conduct of United States intelligence activities.

Section 0.63 of title 28 of the Code of Federal Regulations previously delegated the Attorney General's authority under 50 U.S.C. 403h and 8 U.S.C. 1427(f) to the Assistant Attorney General in charge of the Criminal Division. This order amends § 0.63 by adding the Deputy Assistant Attorneys General, Criminal Division, to the list of individuals empowered to exercise the Attorney General's authority in connection with 50 U.S.C. 403h and 8 U.S.C. 1427(f).

This order is a matter of internal Department management. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. 5 U.S.C. 605(b). This rule is not a major rule within the meaning of section 1(b) of Executive Order No. 12291, nor does it have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order No. 12612.

List of Subjects in 28 CFR Part O

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301, 28 U.S.C. 509 and 510, 8 U.S.C. 1427(f), and 50 U.S.C. 403h, subpart K of part O of title 28 of the Code of Federal Regulations is amended as follows:

PART O—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part O continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.63 is revised to read as follows:

§ 0.63 Delegation respecting admission and naturalization of certain aliens.

(a) The Assistant Attorney General in charge of the Criminal Division and the Deputy Assistant Attorney General, Criminal Division, are each authorized to exercise the power and authority vested in the Attorney General by section 7 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 403h, with respect to entry of certain aliens into the United States for permanent residence.

(b) The Assistant Attorney General in charge of the Criminal Division and the Deputy Assistant Attorneys General, Criminal Division, are each authorized to exercise the power and authority vested in the Attorney General by section 316(f) of the Immigration and Nationality Act, 8 U.S.C. 1427(f), with respect to the naturalization of certain foreign intelligence sources.

Dated: January 7, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–973 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning January 1, 1992. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in November 1991 through January 1992. These interest rates are established pursuant to section 4006 of the Employment Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 ((202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), The Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning January 1, 1992, the interest charged on the underpayment of taxes will be at a rate of 9 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the January 1, 1992, through March 31, 1992, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending Appendix B to Part 2610 to add the vested benefits valuation rates for plan years beginning in November of 1991 through January of 1992.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the Appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 1610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance,

Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307 (1988), as amended by sec. 7881(h), Pub. L. 101–239, 103 Stat. 2106, 2242.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning January 1, 1992, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates Charges

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
January 1, 1992..	March 31, 1992.....	9

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in November of 1991 through January of 1992, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
* * * * *	
November 1991	6.34
December 1991	6.34
January 1992	6.16

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Pub. L. 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning January 1, 1992, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
January 1, 1992..	March 31, 1992.....	9

Issued in Washington, DC, this 7th day of January 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–1079 Filed 1–14–92; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning February 1, 1992. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after February 1, 1992, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since January 1, 1992. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after February 1, 1992, which set reflects a decrease of ¼ percent in the immediate interest rate from 6½ percent to 6¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the

public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after February 1, 1992, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 95 of appendix B is revised and Rate Set 96 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, K_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*		
95	1-1-92	2-1-92	6.50	1.0575	1.0450	1.0400	7	8
96	2-1-82		6.25	1.0550	1.0425	1.0400	7	8

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-1080 Filed 1-14-92; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from January 1, 1992, to March 31, 1992.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 7½ percent, which will be effective from January 1, 1992 through March 31, 1992. This rate represents a decrease of one-half percent from the rate in effect for the fourth quarter of 1991. This rate is based on the prime rate in effect on December 13, 1991.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
*	*	*	*
01/01/92.....	03/31/92	12/13/91	7½

Issued in Washington, DC, on this 7th day of January 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–1081 Filed 1–14–92; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of February 1992.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month	The values for i_k are															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*		*		*		*		*		*		*		*		
February 1992..	.06625	.065	.06375	.0625	.06125	.06	.06	.06	.06	.06	.05875	.05875	.05875	.05875	.05875	.055

Issued at Washington, DC., on this 7th day of January 1992.

James. B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-1082 Filed 1-14-92; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300234A; FRL-3947-9]

RIN 2070-AB78

Certain Fruits and Vegetables; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document defines the commodity terms melon, muskmelon, sugar apple, and summer squash for tolerance purposes and amends the crop grouping for cucurbit vegetables to agree with the muskmelon definition. The Interregional Research Project No. 4 (IR-4) requested this action.

EFFECTIVE DATE: This regulation becomes effective on January 15, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1991 (56 FR 43737), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had requested that the Administrator propose that 40 CFR 180.1(h) be amended to define the commodity terms melon, muskmelon, sugar apple, and summer squash for tolerance purposes and to amend the crop grouping for cucurbit vegetables to agree with the muskmelon definition.

Section 180.1(h) of the CFR (40 CFR 180.1(h)) provides a listing of general commodity terms and EPA's interpretation of the application of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a). The general commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B.

There were no comments received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the general commodities melon, muskmelon, sugar apple, and summer squash should be interpreted to include the corresponding specific commodities listed below.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirment of a tolerance. Therefore, the Administrator concludes that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by revising the commodity definition for melons and adding definitions for muskmelons, sugar apple, and summer squash, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * * *

(h) * * *

A	B
* * * * *	
Melons	*Muskmelons*, including hybrids and/or varieties of *Cucumis melo* (including true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon); and watermelons, including hybrids and/or varieties of (*Citrullus* spp.).
Muskmelons	*Cucumis melo* (includes true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon, and other varieties and/or hybrids of these.
* * * * *	
Sugar apple	*Annona squamosa L.* (sugar apple, sweetsop, anon), and its hybrid *A. squamosa L.* x *A. cherimoya M.* (atemoya). Also *A. reticulata L.* (true custard apple).

A	B
Summer squash	Fruits of the Gourd (Cucurbitaceae) family that are consumed when immature, 100 percent of the fruit is edible either cooked or raw, once picked it cannot be stored, has a soft rind which is easily penetrated, and if seeds were harvested they would not germinate; e.g., *Cucurbita pepo* (i.e., crookneck squash, straigtneck squash, scallop squash, and vegetable marrow); *Lagenaria* spp. (i.e., spaghetti squash, hyotan, cucuzza); *Luffa* spp. (i.e., hechima, Chinese okra); *Memoridica* spp. (i.e., bitter melon, balsam pear, balsam apple, Chinese cucumber); and other varieties and/or hybrids of these.

* * * * *

* * * * *

3. In § 180.34, by revising paragraph (f)(9)(ix), to read as follows:

§ 180.34 Tests on the amount of residue remaining.

* * * * *

(f) * * *

(9) * * *

(ix) Cucurbit vegetables group.

(A) *Commodities.* Balsam pear (bitter melon) (*Mormordica* spp.); Chinese waxgourd (Chinese preserving melon) (*Bernicasa hispida*); citron melon (*Citrullus lanatus*); cucumber (*Cucumis* spp.); gherkin (*Cucumis anguria*); gourds, edible (*Lagenaria* spp., *Luffa acutangula, L. cylindrica*); muskmelon, including hybrids and/or varieties of (*Cucumis melo*) (including true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon); pumpkin (*Cucurbita* spp.); squash, summer (*Cucurbita pepo* var. *melopepo*); squash, winter (*Cucurbita maxima, C. moschata*); watermelon, including hybrids and/or varieties of (*Citrullus* spp.).

(B) *Representative commodities.* Cucumber, muskmelon, and summer squash.

* * * * *

[FR Doc. 92-1071 Filed 1-14-92; 8.45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 7F3516/R1138; FRL-4008-7]

RIN 2070-AB78

Pesticide Tolerances for Thiodicarb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*[thiobis[[(methylimino) carbonyl]oxy]] bis[ethanimidothioate]) and its metabolite methomyl (S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodity leafy vegetables. This regulation to establish a maximum permissible level for residues of the insecticide was in a petition submitted by the Rhone Poulenc Ag Co.

EFFECTIVE DATE: Effective on January 15, 1992.

ADDRESSES: Written objections, identified by document control number, [PP 7F3516/R1138], must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 13, 1987 (52 FR 18019), which announced that Union Carbide Agricultural Products Co., T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (PP 7F3516) to EPA proposing to amend 40 CFR part 180 by establishing a permanent tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 346a) for residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[[(methylimino)carbonyl]oxy]] bis[ethanimidothioate]) and its metabolite methomyl (S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodity leafy vegetables at 30.0 parts per million (ppm). Union Carbide was later acquired by the Rhone Poulenc Ag Co. The petitioner subsequently amended the petition by proposing a tolerance of 35.0 ppm. This revision was announced in the **Federal Register** of October 5, 1989 (54 FR 41160).

There were no comments or requests for a referral to an advisory committee received in response to the notice of filing. A conditional registration is being issued currently requiring some studies described later in this document. The tolerances will expire on July 15, 1994, and the conditional registration will expire on July 15, 1993.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year rat feeding/carcinogenic study with a systemic no-observed-effect-level (NOEL) of 3.0 mg/kg/day (60 ppm), a cholinesterase (ChE) NOEL greater than 10 mg/kg/day (200 ppm) and not carcinogenic at 10 mg/kg/day (200 ppm) (highest dose tested (HDT)); a 2-year mouse feeding/carcinogenic study with a systemic NOEL of 3 mg/kg/day (20 ppm) and not carcinogenic at 10 mg/kg/day (70 ppm) (HDT); a 1-year dog feeding study with red blood cells ChE NOEL of 4.5 mg/kg/day (180 ppm) and a systemic NOEL of 12.8 mg/kg/day (512 ppm); a rat teratology study with a maternal NOEL less than 0.5 mg/kg/day and a developmental toxicity NOEL of 3 mg/kg/day; a three-generation rat reproduction study with an NOEL for reproductive effects greater than 10 mg/kg/day (200 ppm) (HDT); and an acute delayed neurotoxicity study in the hen negative at 660 mg/kg. Mutagenicity studies include a structural chromosomal aberration study and other mutagenicity studies that did not demonstrate mutagenicity or genotoxicity.

The metabolism of thiodicarb in plants and animals is adequately understood for the purposes of the proposed tolerance. A ruminant metabolism study shows that thiodicarb is metabolized in steps to methomyl, methomyl oxime, acetonitrile, acetamide, acetic acid, and carbon dioxide. Plant metabolism studies show that thiodicarb is likewise metabolized to methomyl, methomyl oxime, acetonitrile, and carbon dioxide.

The animal metabolism study identified acetamide as a potential metabolite of thiodicarb. Acetamide is not a plant metabolite.

Four studies have been conducted with acetamide that have demonstrated a possible carcinogenic effect. Although none of the four studies meet current standards for carcinogenicity testing, the studies collectively demonstrate that, at

least under certain conditions, long-term dietary administration of acetamide at high doses is associated with the occurrence of liver tumors in rats. In 1988, based on the four acetamide studies, the Agency classified acetamide as a possible human carcinogen (Group C) and conducted a quantitative risk assessment for the cotton and soybean uses proposed for thiodicarb. These studies are described in detail in the **Federal Register** of July 3, 1985 (50 FR 27452 and 27463) in which the Agency proposed to establish tolerances for the use of thiodicarb on cotton and soybeans. In the same notice, it was also tentatively concluded that acetamide naturally occurs in milk and eggs. Additional followup analyses confirmed these findings. In a limited number of untreated samples acetamide levels in milk averaged 170 ppb (0.17 ppm). These untreated background values are far in excess of those maximum expected values of acetamide estimated from thiodicarb, i.e., milk at 0.3 ppb (0.0003 ppm) and eggs at 0.07 ppb (0.0007 ppm), and it was concluded that the ubiquitous nature of acetamide may confound its regulation. A final rule establishing tolerances for cotton and soybeans was published in the **Federal Register** of October 10, 1985 (50 FR 41341 and 41349).

The Agency has since reevaluated the toxicity of acetamide. While the Agency believes that the previous classification of acetamide as a Group C carcinogen is appropriate, it has been determined that the acetamide studies are not suitable for quantitative risk assessment because of the deficiencies in the individual studies. These deficiencies include a small number of test animals, lack of a definitive dose-response relationship, extremely high exposure rates, questionable quality of test animals, and administration of oxytetracycline to test animals in one study which might have adversely influenced the test results. In addition, the toxicology data base for thiodicarb includes two valid oncogenicity studies that were negative for oncogenic effects.

However, because the data base for acetamide is incomplete to fully address its carcinogenic potential and to determine whether there may be a species-related difference in conversion of syn-methomyl to anti-methomyl and resultant excretion as acetonitrile or metabolic hydrolysis to acetamide, the Agency is requiring the following studies/information:

1. Metabolism study (with the parent chemical) in an appropriate species (primate) and information on whether there is a species-specific metabolic conversion of thiodicarb to acetamide.

2. Substantiation of the isomeric form of the registered product.

3. Studies designed to identify and measure (as the glucuronide or other conjugate) the N-hydroxy acetamide metabolite. A conditional registration and a tolerance with expiration date are being issued requiring these studies. Once these studies have been submitted and evaluated, the Agency may require additional toxicity studies.

On the basis of available studies on acetamide and the chronic carcinogenicity studies for thiodicarb, the Agency has concluded that the human risk posed by the use of thiodicarb on leafy vegetables does not raise significant risk concerns.

Based on the 2-year rat feeding study with a NOEL of 3.0 mg/kg/day and using an uncertainty factor of 100, the reference dose (RfD) for humans is 0.03 mg/kg body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 1.833 percent of the RfD. The current action will contribute 0.0125 mg/kg/day of residue to the human diet utilizing an additional 39.835 percent of the RfD. This results in a total utilization of 41.667 percent of the RfD.

The nature of the residue in plants is considered to be adequately understood to support this tolerance request. Adequate analytical methods, gas chromatography with a flame photometric detector selective for sulfur-containing compounds and gas chromatography/mass spectrometry, are available for enforcement purposes. The methodology has been published in the Food and Drug Administration's Pesticide Analytical Manual (PAM) II. There are no livestock feed items associated with this petition; there are no problems of secondary residues in meat, milk, poultry, and eggs.

Based on the above information, the Agency has concluded that the proposed tolerance for residues of the pesticide in or on leafy vegetables would protect thepublic health. Therefore, the tolerance is established as set forth below.

EPA is also amending 40 CFR 180.3 by adding new paragraph (d)(14) as a conforming amendment to the thiodicarb revision under 40 CFR 180.48.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.3, by adding new paragraph (d)(14), to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(d) * * *

(14) Where tolerances are established for residues of methomyl, resulting from the use of thiodicarb and/or methomyl on the same raw agricultural commodity, the total amount of methomyl shall not yield more residue

than that permitted by the higher of the two tolerances.

* * * * *

3. By revising § 180.407, to read as follows:

§ 180.407 Thiodicarb; tolerances for residue.

(a) A tolerance is established for the combined residues of the insecticide thiodicarb (dimethyl *N, N'*-[thiobis [[(methylimino) carbonyl]oxy]] bis[ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy]-thioacetimadate) in or on the following raw agricultural commodity:

Commodity	Parts per million
Corn, sweet grain (K + CWHR)	2.0
Cottonseed	0.4
soybeans	0.2

(b) A tolerance that expires on July 15, 1994 is established for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis [[(methylimino) carbonyloxy]] bis[ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy]thioacetimidate) in or on the following raw agricultural commodity crop group:

Commodity	Parts per million
Leafy vegetables	35 ppm

[FR Doc. 92-1072 Filed 1-14-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-594; RM-7142, RM-7318]

Radio Broadcasting Services; Harrisburg and Albermarle, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of York David Anthony, allots Channel 224A to Harrisburg, North Carolina, as the community's first local FM service. See 55 FR 882, published May 12, 1990. Channel 224A can be allotted to Harrisburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) northwest to avoid short-spacings to Station WKRR, Channel 222C, Asheboro, North Carolina, and Station WZNS, Channel 225C, Dillon, South Carolina, at coordinates North Latitude 35-20-28 and West Longitude 80-41-30. The counterproposal of Piedmont Crescent Communications, Inc., requesting the substitution of Channel 264A for Channel 265A at Albermarle, the reallotment of Channel 264A to Harrisburg, and the modification of its license for Station WABZ-FM to specify Harrisburg as its community of license, is denied. With this action, this proceeding is terminated.

DATES: Effective February 24, 1992. The window period for filing applications will open on February 25, 1992, and close on March 26, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-594, adopted December 31, 1991, and released January 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Harrisburg, Channel 224A.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1104 Filed 1-14-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-384; RM-6884, RM-7205]

Radio Broadcasting Services; Epworth and Dyersville, IA, and Dodgeville, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 247C3 to Epworth, Iowa, in response to a request filed by Margaret Keefer. See 54 FR 37669, September 12, 1989. The allotment of Channel 247C3 to Epworth was that community's first local transmission service. Accordingly, that allotment was preferred over a counterproposal that requested an upgrade of allotted Channel 257A at Dodgeville, Wisconsin. Commission priorities require that first local service be favored over an upgrade in a community which already has a first local service. The coordinates for the Epworth allotment are 42-26-42 and 90-55-55. With this action the proceeding is terminated.

EFFECTIVE DATE: February 24, 1992. The window period for filing applications for Channel 247C3 at Epworth will open on February 25, 1992, and close on March 26, 1992.

FOR FURTHER INFORMATION CONTACT: Belford V. Lawson, III, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-384, adopted December 31, 1991, and released January 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel 247C3, Epworth.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1105 Filed 1-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-563; RM-6078, RM-6710]

Radio Broadcasting Services; Heber Springs and Newport, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Channel 244C2 for Channel 264A at Newport, Arkansas, and Channel 264C2 for Channel 244A at Heber Springs, Arkansas, and modifies the licenses of Station KOKR(FM), Newport, Arkansas, and Station KAWW-FM, Heber Springs, Arkansas, accordingly, to specify operation on the higher class channels. See 55 FR 17438, April 25, 1990. Channel 244C2 can be allotted at Newport at a restricted site 17.3 kilometers (10.7 miles) southwest at coordinates 35-29-00 and 91-22-30. Channel 264C2 can be allotted at Heber Springs at a restricted site 6.2 kilometers (4.2 miles) south at coordinates 35-25-52 and 92-01-54. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, MM Docket No. 87-563, adopted December 30, 1991, and released January 7, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 264A and adding Channel 244C2 at Newport, and by removing Channel 244A and adding Channel 264C2 at Heber Springs.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1101 Filed 1-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-406; RM-6745, RM-7255]

Radio Broadcasting Services; Grenada, Artesia and Okolona, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C2 for Channel 261A at Grenada, Mississippi, and modifies the license of Station WQXB(FM) to specify operation on the higher class channel in response to a joint petition filed by Chatterbox, Inc. and WYS, Inc. See 54 FR 40138, September 29, 1989. In addition, this action substitutes Channel 260C2 for Channel 261A at Artesia, Mississippi, and modifies the license of Station WZIX(FM) accordingly. Finally, this action allots Channel 289A to Okolona, Mississippi, as that community's first local broadcast service. The coordinates for Channel 261C2 at Grenada are North Latitude 33-43-08 and West Longitude 90-01-56. The coordinates for Channel 260C2 at Artesia are North Latitude 33-41-00 and West Longitude 88-36-48. The coordinates for Channel 289A at Okolona are North Latitude 33-57-51 and West Longitude 88-44-41. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 21, 1992; the window period for filing applications will open on February 24, 1992, and close on March 25, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-406, adopted December 30, 1991, and released January 7, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 261A and adding Channel 261C2 at Grenada, by removing Channel 261A and adding Channel 260C2 at Artesia, and by adding Channel 289A, Okolona.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1100 Filed 1-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-179; RM-7734]

Radio Broadcasting Services; Bixby, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John M. Singer, substitutes Channel 287C3 for Channel 287A at Bixby, Oklahoma, and modifies his construction permit for Station KBXT-FM to specify operation on the higher class channel. See 56 FR 30374, July 2, 1991. Channel 287C3 can be allotted to Bixby in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 35-56-30 and West Longitude 95-52-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-179, adopted December 30, 1991, and released January 8, 1992. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 287A and adding Channel 287C3 at Bixby.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1102 Filed 1–14–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–276; RM–7804]

Radio Broadcasting Services; Belton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sheldon Communications, Inc., licensee of Station KOOC(FM), Channel 292A, Belton, Texas, substitutes Channel 292C3 for Channel 292A at Belton, and modifies KOOC(FM)'s license to specify operation on the higher powered channel. See 56 FR 50550, October 7, 1991. Channel 292C3 can be allotted to Belton in compliance with the Commission's minimum distance separation requirements and can be used at Station KOOC(FM)'s licensed site. The coordinates for Channel 292C3 are 31–03–46 and 97–31–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–276, adopted January 3, 1992, and released January 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 292A and adding Channel 292C3 at Belton.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1103 Filed 1–14–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–296; RM–6090]

Radio Broadcasting Services; Christiansted, Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228B in lieu of Channel 228A at Christiansted, Virgin Islands, and modifies the construction permit for Station WAVI, Christiansted, Virgin Islands, to specify operation on Channel 228B. The reference coordinates for the Channel 228B allotment at Christiansted, Virgin Islands, are 17–44–07 and 64–40–12. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–296, adopted December 30, 1991, and released January 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 316.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by removing Channel 228A and adding Channel 228B at Christiansted.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1106 Filed 1–14–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–18; Notice 7]

RIN 2127–AE31

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: On April 23, 1991, NHTSA published a final rule which amended Safety Standard No. 205, *Glazing Materials*, to permit three new items of glass-plastic glazing in motor vehicles. One of these, Item 15A, Annealed glass-plastic glazing, was permitted to be used anywhere in a motor vehicle except the windshield. It was not, however, permitted for convertibles. In response to a petition for reconsideration from General Motors, this notice amends Standard No. 205 to remove the standard's prohibition of Item 15A glazing for convertibles. The notice also makes a technical amendment to the standard to permit the use of Item 14 glass-plastic glazing for side and rear windows in convertibles.

DATES: The amendments in this final rule are effective February 14, 1992.

Petitions for reconsideration of this final rule must be filed by February 14, 1992.

ADDRESSES: Petitions for reconsideration should refer to the above docket and notice numbers and be submitted to the following: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies must be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Clark Harper, Office of Vehicle Safety Standards, NRM–12, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2264).

SUPPLEMENTARY INFORMATION: Safety Standard No. *Glazing Materials*, specifies performance requirements for the types of glazing that may be installed in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be installed. One type of glazing addressed in Standard No. 205 is glass-plastic glazing, a laminate of one or more layers of glass and one or more layers of plastic. It is installed so that a glass layer faces outward and a plastic layer inward.

On April 23, 1991, NHTSA published in the **Federal Register** (56 FR 18526) a final rule permitting three new items of glass-plastic glazing. One of these, Item 15A, Annealed glass-plastic glazing, was permitted to be used anywhere in a motor vehicle except the windshield. It was not, however, permitted for convertibles. The other two items were only permitted to be used in areas not requisite for driving visibility. NHTSA stated that it believed the addition of the three new types of glazing to Standard No. 205 would facilitate the use of glass-plastic glazing in all glazing locations in a motor vehicle, and that it encourages greater use of glass-plastic glazing because of its proven injury-reduction capabilities in crashes.

In prohibiting the use of Item 15A glazing for convertibles, NHTSA followed the same approach it had used earlier for Item 14 glazing, the first type of glass-plastic glazing permitted to be used in areas requisite for driving visibility. The final rule permitting the use of Item 14 glazing was published in the **Federal Register** (48 FR 52061) on November 16, 1983.

NHTSA prohibited the use of Item 14 glazing in convertibles because of concern about possible discoloration of the glazing. In the November 1983 notice, the agency noted that the plastic side of glass-plastic glazing is susceptible to chemical alteration (becoming yellow or cloudy) when exposed to intense and prolonged ultraviolet light. In addressing the use of Item 14 glazing in convertibles, NHTSA stated the following:

> The agency is, however, concerned about the potential exposure of the plastic side of the windshield in convertibles and vehicles that have no or removable tops. While the agency believes that a prolonged test directing ultraviolet radiation against the plastic side of the glazing would be overly stringent, it does believe that it may be appropriate to set some requirement for directing ultraviolet radiation against the plastic-side of glass-plastic glazing for use in convertibles or cars with no or removable tops. At this time, the agency lacks the necessary data to support such requirement. As an interim solution, the agency has decided to prohibit the use of glass-plastic glazing in those vehicles until such data are available. 48 FR 52062.

In following this same approach for Item 15A glazing, NHTSA stated the following in its April 1991 notice:

> The NPRM did not explicitly state that Item 15 is prohibited in convertible-type vehicles, as is Item 14, to prevent excessive deterioration of glazing in areas requisite for driving visibility due to ultraviolet radiation. The final rule [makes] explicit the agency's intent in [this area]. 56 FR 18530.

General Motors (GM) submitted a petition requesting that NHTSA reconsider its prohibition of Item 15A glazing in convertibles. GM stated that it believes Item 15A glazing would not be exposed to significantly greater amounts of ultraviolet light directed against the plastic side in convertibles than in non-convertibles. That company stated that it believes convertibles are typically operated with the side windows in the open (i.e., down) position, and that, similarly, rear windows are typically part of the removed or stowed roof. Therefore, according to GM, side and rear windows in convertibles are not likely to be exposed to significantly more ultraviolet light when the roof is removed or stowed.

GM also argued that the prohibition of Item 15A glazing for convertibles could discourage development of market-feasible glass-plastic glazing. That company noted that, in some cases, the same glazing material is used in both the base and convertible versions of the same model. According to GM, a vehicle manufacturer wanting to use glass-plastic glazing in the base (i.e., non-convertible) version might be discouraged by the added cost of developing different glazing materials for base and convertible versions.

After considering GM's petition, NHTSA has decided to amend Standard No. 205 to remove the standard's prohibition of Item 15A glazing for convertibles. The agency is persuaded that possible discoloration of glazing resulting from direct sunlight on the inside, plastic side of the glazing is not a significant concern for glazing areas other than the windshield. (As indicated above, Item 15A glazing is not permitted to be used for the windshield of any vehicles.) NHTSA agrees that convertibles are typically driven either with the top up or, when the top is down, with the side windows down and the rear window removed. Thus, the inside, plastic side of Item 15A glazing on the side windows or rear window of convertibles is not likely to be exposed to significantly more ultraviolet light than the same glazing on non-convertibles. NHTSA has therefore determined that its rationale for prohibiting the use of glass-plastic glazing for convertibles is not valid for side windows and the rear window.

NHTSA notes that, in the rulemaking concerning Item 14 glazing, it was generally understood that Item 14 glazing was intended to be used for windshields. Therefore, the agency's analysis for convertibles of possible discoloration resulting from direct sunlight on the plastic side of the glazing focused on windshields. While NHTSA is unaware of any manufacturer plans to use Item 14 glazing for side or rear windows, the agency recognizes that its conclusions about the inappropriateness of prohibiting Item 15 glazing for side and rear windows of convertibles is equally applicable to Item 14 glazing. Therefore, the agency is making a technical amendment to Standard No. 205 to permit the use of Item 14 glazing for convertible side and rear windows.

In its petition, GM also requested clarification of certain wording of Standard No. 205. The issue raised by GM concerning this language was subsequently addressed by NHTSA in a correction notice published in the **Federal Register** (56 FR 49148) on September 27, 1991.

This rule relieves restrictions in Standard No. 205 by permitting the use of two items of glass-plastic glazing in convertible side and rear windows. Manufacturers are not required to use these items of glass-plastic glazing. Because the rule relieves restrictions and facilitates the use of glass-plastic glazing in motor vehicles, NHTSA finds for good cause that the rule should become effective 30 days after it is published.

Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this final rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This final rule does not require the use of glass-plastic glazing but instead removes the prohibition of using two items of glass-plastic glazing for convertible side and rear windows. No additional required costs are imposed on manufacturers or consumers. The agency has determined that the economic effects of this rule are so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this final rule would not have a significant economic impact on a substantial number of small entities. As indicated above, this final rule does not require the use of glass-plastic glazing but instead removes the prohibition of using two items of glass-plastic glazing for convertible side and rear windows. No additional required costs are imposed on manufacturers or consumers. Therefore, this rule will not have a significant economic impact on small businesses manufacturing glazing or vehicles, or on small businesses, small organizations and small governmental units purchasing glazing or new vehicles.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the final rule has no Federalism implications that warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this final rule. The agency has determined that this final rule does not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. In § 571.205, S5.1.2.4 and S5.1.2.5 are revised to read as follows:

* * * * *

S5.1.2.4. Item 14—*Glass Plastics.* Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.10 and Test Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in S5.1.2.9, *Test Procedures for Glass-Plastics,* may be used anywhere in a motor vehicle, except that it may not be used in windshields of any of the following vehicles: convertibles, vehicles that have no roof, vehicles whose roofs are completely removable.

S5.1.2.5. *Item 15A—Annealed Glass-Plastic for use in all Positions in a Vehicle Except the Windshield.* Glass-plastic glazing materials that comply with Test Nos. 1, 2, 3, 4, 9, 12, 16, 17, 18, 19, 24, and 28, as those tests are modified in S5.1.2.9, *Test Procedures for Glass-Plastics,* may be used anywhere in a motor vehicle except the windshield.

* * * * *

Issued on January 9, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-1007 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 920109-2009]

Foreign Fishing; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1992 groundfish fishery specifications and management measures, and request for comments.

SUMMARY: NOAA announces the 1992 specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the level of the acceptable biological catch, harvest guidelines and quotas, and their distribution between domestic and foreign fishing operations. The management measures for 1992 are designed to keep landings within the harvest guidelines or quotas, if any, and to achieve the goals and objectives of the FMP and its implementing regulations. These actions are authorized by the regulations implementing the FMP. The intended effect of these actions is to establish allowable harvest levels of Pacific coast goundfish and to implement management measures designed to achieve but not exceed those harvest levels.

EFFECTIVE DATES: January 1, 1992, until modified, superseded, or rescinded. Comments will be accepted until January 30, 1992.

ADDRESSES: Comments on these actions should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206-526-6140; or Rodney R. McInnis (Southwest Region, NMFS) 213-514-6199.

SUPPLEMENTARY INFORMATION: The FMP, as amended, requires that management specifications for groundfish be evaluated each calendar year, that harvest guidelines or quotas be specified for species or species groups in need of additional protection, and that management measures designed to achieve the harvest guidelines or quotas be published in the Federal Register and implemented by January 1, the beginning of the next fishing year.

This Federal Register notice announces the final specifications and management measures recommended by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) for implementation effective January 1, 1992. The specifications and management measures announced herein may be modified during the year

according to the procedures of Amendment 4 to the FMP.

Amendment 4 to the FMP established a process which provides for announcement of the final specifications in the **Federal Register** after full public participation and deliberation at two meetings of the council. The process for adopting acceptable biological catch (ABC) levels, harvest guidelines and quotas for 1992 was initiated early in 1991 so that preliminary specifications could be adopted by the Council at its September 1991 meeting. New stock assessments, the basis for changes to the 1991 ABCs, were distributed to the public prior to the September meeting. The documents were reviewed and commented upon by the Council's scientific and industry advisory committees and by the public. After receiving the comments, the Council adopted the preliminary ABCs and harvest guidelines at the September Council meeting, which were distributed to the public by a Council mailing to interested individuals, including a request for comments before and during the November Council meeting. The final recommendations of harvest specifications, and management measures designed to achieve those specifications, adopted at the November Council meeting were forwarded to the Secretary for implementation by January 1, 1992.

The ABCs and harvest guidelines announced herein are the basis for the management measures recommended for 1992. All of the management measures announced in this notice are considered "routine," and have been so designated at 50 CFR 663.23.

I. Final Specifications of ABC, Harvest Guidelines and Quotas, and Apportionments to DAP, JVP, DAH, and TALFF

The management specifications include the ABC, the designation and amounts of harvest guidelines or quotas for species that need individual management, and the apportionment of the harvest guidelines or quotas between domestic and foreign fisheries. For those species needing individual management that will not be fully utilized by domestic processors or harvesters, or that can be caught without severely impacting species that are fully utilized by domestic processors or harvesters, the harvest guidelines or quotas may be apportioned to domestic annual harvest (DAH, which includes domestic annual processing (DAP) and joint venture processing (JVP)) and the total allowable level of foreign fishing (TALFF).

The final 1992 management specifications are listed in Tables 1 and 2, followed by a discussion of each species with an ABC, harvest guideline, or quota that differs from 1991.

As in the past, these specifications include fish caught in state ocean waters (0–3 nautical miles offshore) as well as fish caught in the exclusive economic zone (EEZ, 3–200 nautical miles offshore).

TABLE 1.—FINAL SPECIFICATIONS OF ABC FOR 1992 FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

[In thousands of metric tons]

Species	Area					
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific cod			[2]	[2]	[2]	3.2
Pacific whiting						[3] 232.0
Sablefish						[4] 8.9
Jack mackerel						[5] 52.6
Rockfish:						
Pacific Ocean perch	0.0	0.0	[2]	[2]	[2]	0.0
Shortbelly						[4] 13.0
Widow						[4] 7.0
Thornyheads:						
Shortspine		[6]	[6]	[6]		1.9
Longspine		[6]	[6]	[6]		10.1
Sebastes complex:						
Bocaccio	[2]	[2]	[6]	[6]	[6]	0.8
Canary	0.8	1.5	0.6	[2]	[2]	2.9
Chilipepper						[4] 3.6
Yellowtail	1.3	3.1	0.3	[2]	[2]	4.7
Remaining rockfish	0.8	3.7	1.9	4.3	3.3	14.0
Flatfish:						
Dover sole	2.4	6.1	4.9	5.0	1.0	19.4
English sole						[4] 1.9
Petrale sole	0.6	1.1	0.5	0.8	0.2	3.2
Arrowtooth						[7]
Other flatfish	0.7	3.0	1.7	1.8	0.5	7.7
Other Fish [8]	2.5	7.0	1.2	2.0	2.0	14.7

[1] U.S. portion, except for Pacific whiting.
[2] These species are not common or important in the areas footnoted. Rockfish species with this footnote are included in the "remaining rockfish" category for the areas footnoted only. Other groundfish species with this footnote are included in the "other fish" category for the areas footnoted.
[3] ABC for the U.S. and Canada combined.
[4] Total—all INPFC areas off Washington, Oregon, and California.
[5] Includes area beyond the EEZ (200 nm), and in the EEZ north of 39° N. latitude. The FMP governs only jack mackerel in the EEZ north of 39° N. latitude.
[6] The ABC is for these areas combined. For bocaccio, the Eureka area contribution is small.
[7] Pending.
[8] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, and groundfish species (except rockfish) in those areas designated by footnote 2

TABLE 2.—FINAL HARVEST GUIDELINE (HG) SPECIFICATIONS AND THEIR APPORTIONMENT TO DAP, JVP, DAH, AND TALFF IN 1992

[In thousands of metric tons]

Species	HG	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific whiting	[2] 208.8	208.8	0.0	208.8	0.0	0.0
Shortbelly rockfish	13.0	13.0	0.0	13.0	0.0	0.0
Jack mackerel	[3] 46.5	46.5	0.0	46.5	0.0	0.0
Sablefish	[4] 8.9	8.9	0.0	8.9	0.0	0.0
Pacific ocean perch	[5] 1.55	[5] 1.55	0.0	[5] 1.55	0.0	0.0
Widow rockfish	7.0	7.0	0.0	7.0	0.0	0.0
Bocaccio	[6] 1.0	1.0	0.0	1.0	0.0	0.0
Yellowtail rockfish	[7] 4.0	4.0	0.0	4.0	0.0	0.0
Thornyheads	[8] 7.0	7.0	0.0	7.0	0.0	0.0
Dover sole	[4] 19.4	19.4	0.0	19.4	0.0	0.0
Sebastes complex	[7] 8.0	8.0	0.0	8.0	0.0	0.0

[1] In the event of foreign trawl or joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: Sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, other rockfish (that is, rockfish excluding Pacific ocean perch), flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See 50 CFR 611.70(c) for application of incidental retention allowance percentages to joint venture fisheries.

[2] U.S. only, based on 90 percent of the 232,000 mt ABC for the U.S. and Canada combined.

[3] The harvest guideline for jack mackerel north of 39° N. latitude is derived by subtracting the potential harvest outside of 200 nm (6,100 mt) from the 52,600 mt ABC that applies both inside and outside of 200 nm.

[4] Sablefish, thornyheads, and Dover sole may be managed together as the "deepwater complex." The sablefish trawl and nontrawl allocations also are harvest guidelines. (See the section on trawl and nontrawl sablefish management for 1992.)

[5] The harvest guideline for Pacific ocean perch applies to the Vancouver and Columbia areas combined.

[6] The harvest guideline for bocaccio applies to the Eureka, Monterey, and Conception areas.

[7] The harvest guidelines for yellowtail rockfish are 4,000 mt for the Vancouver and Columbia areas north of Cape Lookout, and 1,400 mt for the Eureka and Columbia areas south of Cape Lookout. The harvest guideline for the *Sebastes* complex in the Vancouver and Columbia areas north of Cape Lookout is 8,000 mt.

[8] The harvest guideline for thornyheads includes both shortspine and longspine thornyheads in the Columbia, Eureka, and Monterey areas.

ABCs

The 1992 final ABCs are changed from the 1991 levels for the following species: Pacific whiting, thornyheads, yellowtail rockfish, and Dover sole. (Although no ABC is yet available for arrowtooth flounder, it is listed separately in Table 1 to indicate its importance as a flatfish species.) These changes are based on the best available scientific information. The documents considered in making these recommendations are available from the Council (see ADDRESSES), and were distributed to the public in the Council's stock assessment and fishery evaluation (SAFE) document. The SAFE document, required under the Guidelines for Fishery Management Plans at 50 CFR part 602, summarizes the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

Pacific Whiting

Based on a new stock assessment, the Council adopted a 1992 ABC for the United States and Canada combined of 232,000 metric tons (mt), 8 percent lower than the 253,000 mt combined ABC in 1991. This ABC is based on a hybrid fishing strategy that combines the features of a constant fishing mortality (F) strategy and a variable F strategy where fishing mortality for a particular year is proportional to the level of female spawning biomass. Potential yield was estimated at low, moderate, and high harvest rates. The Council selected the moderate harvest rate, resulting in the 232,000 mt ABC.

Thornyheads

For the first time, separate ABCs were developed for shortspine and longspine thornyheads (1,900 mt and 10,100 mt, respectively). Estimates of thornyhead abundance were developed from recent trawl surveys in the Columbia and Eureka areas, and were expanded to include the Monterey area.

Yellowtail Rockfish

A rounding error in the 1991 specification was corrected, resulting in an increase of 100 mt in the ABC for the Vancouver area and for the total in 1992.

Dover Sole

A new stock assessment for the Eureka area was prepared which includes information from the 1990 trawl survey. The 1992 ABC for this area, 4,900 mt, is 3,100 mt lower than the 1991 ABC of 8,000 mt, but greater than the 1990 catch of 3,500 mt. As a result, the 1992 coastwide ABC is adjusted to 19,400 mt.

Harvest Guidelines and Quotas

Those species or species groups with harvest guidelines in 1991 will continue to be managed with harvest guidelines in 1992. In addition, Pacific whiting, shortbelly rockfish, and jack mackerel, which had quotas in 1991 because of the possibility of foreign or joint venture fisheries, will be available only for domestic harvest and processing in 1992, and will be managed with harvest guidelines as contemplated in the FMP. The trawl and nontrawl gear allocations for sablefish, which were quotas in the past, also will be specified as harvest guidelines. This is done so that the Council's goal of providing very small trip limits until the end of the year will not be compromised by premature closure of the fishery due to difficulties in estimating landings, as occurred in the nontrawl sablefish fishery in 1991.

If a harvest guideline is projected to be exceeded, the Council's Groundfish Management Team (GMT) is required to evaluate current data to determine if a resource conservation issue exists, and if so, to provide a recommendation for addressing the issue.

In most cases, harvest guidelines equal the ABCs, or prorated ABCs, for the areas that are included. However, the Council recommended harvest guidelines that exceed the ABCs for Pacific ocean perch (POP), yellowtail rockfish, and bocaccio. It does not, however, exceed the overfishing level for any of these species. The harvest guideline for thornyheads is lower than the aggregate ABCs, but nonetheless may result in landings above the ABC for shortspine thornyheads.

The FMP requires that certain factors be considered when setting a harvest guideline above an ABC. These factors are: Exploitable biomass and spawning biomass relative to maximum sustainable yield (MSY) levels; fishing mortality rate relative to MSY; if part of

a multispecies fishery, the relative contribution of the species to the total catch; the impact, if any, of the increase on other groundfish species groups; the magnitude of incoming recruitment, the impact of harvest higher than ABC on the potential for future harvest to achieve the goals and objectives of the FMP. Except for POP which already is managed according to a rebuilding schedule set forth in the FMP, these criteria were considered at the November 1991 Council meeting in setting the harvest guidelines for 1992, and are available in Council documents and the transcript of the November meeting.

The FMP also defines "overfishing" as a fishing mortality rate that would reduce spawning biomass per recruit below 20 percent of its unfished limit (unless the species is above the level that would produce the maximum sustainable yield (MSY)). If the overfishing level is reached, the Guidelines for Fishery Management Plans at 50 CFR part 602 require the Council to identify actions to be undertaken to alleviate overfishing. In 1991, two species, bocaccio and shortspine thornyhead are projected to exceed their respective levels of overfishing, bocaccio by 15 percent and shortspine thornyheads by 6 percent. The Council has recommended a number of actions, which are referenced below and in the section on management measures, to avoid reaching the overfishing level for these two species in 1992.

POP

The 1992 harvest guideline for POP is adjusted upward to 1,550 mt from 1,000 mt in 1991 even though the ABC remains at zero. As for the last several years, the harvest guideline, in conjunction with a trip limit, is necessary to accommodate only incidental catches of POP. The incidental catch of POP in 1992 is estimated to be approximately 1,550 mt. This harvest guideline also is consistent with the 1,550-mt quota established in the original FMP to achieve the 20-year rebuilding schedule for POP.

Yellowtail Rockfish and the Sebastes Complex

In previous years, the harvest guidelines for yellowtail rockfish and the *Sebastes* complex applied to the Vancouver and Columbia areas. In 1992, the Council recommended two harvest guidelines for yellowtail rockfish, splitting the Columbia area at Cape Lookout, Oregon: 4,000 mt north of Cape Lookout, Oregon (which includes the Vancouver and northern Columbia areas), and 1,400 mt south of Cape Lookout (which includes the southern Columbia and Eureka areas). These harvest guidelines together are 700 mt higher than the 4,700-mt ABC for yellowtail rockfish in the Vancouver, Columbia, and Eureka areas (600 mt north of Cape Lookout, 100 mt south of Cape Lookout).

The Council recommended that the harvest guideline exceed ABC because it felt the ABC recommended by the GMT was extremely conservative. The 1990 stock assessment, which found the stock biomass stable and near the MSY level, noted an absence of older female yellowtail rockfish in trawl landings. This could be due to two scenarios: (1) Those fish are still alive but are not available to fishing gear (the optimistic model); (2) adult female fish die at an earlier age than males (the pessimistic model). The ABC, although based on the best available scientific information, is at the low end of the range generated by the pessimistic model, a very conservative recommendation. The Council feels there is sufficient uncertainty about the older female fish to recommend a slightly less conservative harvest guideline. The recommended harvest guideline is halfway between the lower end and midpoint of the ABC range derived from the pessimistic model.

The *Sebastes* complex, which includes yellowtail rockfish, has been managed to reduce the harvest of yellowtail rockfish. To accomplish this, the harvest guideline for the *Sebastes* complex has been applied to the same area where individual trip limits were applied for yellowtail rockfish. Therefore, since individual trip limits for yellowtail rockfish will be applied only north of Cape Lookout in 1992 (see section II, Management Measures), the harvest guideline for the *Sebastes* complex also will apply to that area. The 1992 harvest guideline of 8,000 mt, which in 1991 was the sum of the ABCs of the species in the complex, includes the 600 mt by which the harvest guideline exceeds the ABC for yellowtail rockfish north of Cape Lookout.

Bocaccio

The harvest guideline for bocaccio (which applies to the Eureka, Monterey, and Conception areas) is reduced from 1,100 mt in 1991 to 1,000 mt in 1992. The harvest guideline, although above the 800-mt ABC, is lower than the annual harvest levels of about 2,000 mt from 1985–1990, and is consistent with the Council's policy of gradually reducing harvest levels to mitigate economic impacts. The overfishing level for bocaccio is 1,300 mt in both 1991 and 1992. The projected catch estimate for 1991 suggests that the bocaccio harvest may reach 1,500 mt in 1991, exceeding the level of overfishing. The 5,000-pound trip limit was not reduced further in 1991 because most bocaccio are landed in small trips that would not have been affected by a reduction in trip limits without resulting in a disproportionately high increase in discards, negating the benefit of the reduced trip limit.

To reduce landings in 1992, the Council has recommended that: (1) The harvest guideline be reduced by 100 mt; (2) a cumulative trip limit for all landings of bocaccio be applied, which is more restrictive than the 1991 trip limit of 5,000 pounds per trip (see Section II, Management Measures); and (3) that the mesh size for roller gear in the Vancouver, Columbia, and Eureka areas be increased (implementation of the final rule is expected in January 1992). Furthermore, the Council is completing development of a license limitation program which is intended to reduce effort and competition in the groundfish fishery, but this program has not yet been submitted to and approved by the Secretary and would not be implemented before 1994.

Thornyheads

The 7,000-mt harvest guideline for thornyheads includes both shortspine and longspine thornyheads combined, and is 42 percent less than the sum of the ABCs for the two species (1,900 mt and 10,100 mt, respectively). Although the ABCs for these two species are quite different, both species are unavoidably caught together and in approximately equal proportions. Therefore, a harvest guideline of 7,000 mt is expected to result in catches of about 3,500 mt for each species. Consequently, longspine thornyhead will be harvested below its ABC and shortspine thornyhead will be harvested above its ABC, but just below its overfishing level of 3,536 mt in 1992.

The projected catch estimate for 1991 suggests that shortspine thornyheads may be fished at 3,760 mt, about 200 mt above the overfishing level. To lower harvest levels of shortspine thornyheads in 1992, the Council has recommended: (1) An aggregate harvest guideline of 7,000 mt that is less than the 12,000-mt sum of the ABCs for the individual species, and 1,900 mt lower than in 1991; (2) a cumulative trip limit (of 25,000 pounds in a 2-week period) that is intended to account for all harvest of this species and discourage discards (see section II, Management Measures); and (3) an increase in the minimum mesh size for roller trawl gear in the Vancouver, Columbia, and Eureka subareas (implementation of the final

rule is expected in January 1992). The GMT advised that even if the actual catch of shortspine thornyheads is 4 percent of stock abundance, (about 3,600 mt) in 1992, "the change in status of the stock in 1992 will be small and unmeasurable," and that exceeding the ABC in 1992 will not stress the stock.

Pacific Whiting

The U.S. and Canadian governments were unable to agree on the appropriate levels of harvest by each country for this transboundary stock. In 1991, as much as 129 percent of the combined ABC may be taken by both countries. The U.S. quota (228,000 mt) was based on 90 percent of the U.S.-Canada ABC of 253,000 mt, whereas Canada based its quota (98,000 mt) on 30 percent of the expected total catch. Whereas the United States offered to lower its harvest from 90 percent of the U.S.-Canada ABC in 1991 to 80 percent in 1992, Canada wanted to maintain its catch at 30 percent or more of the total harvest. Lacking agreement with Canada, the Council recommended that the U.S. share remain at 90 percent of the U.S.-Canada aggregate ABC of 232,000 mt, which results in a harvest guideline of 208,800 mt for the U.S. portion in 1992. The Chairman of the GMT testified to the Council at its November meeting that exceeding the U.S.-Canada ABC by 29 percent in 1992, as in 1991, will not result in overfishing in 1992. It is, however, expected to result in reduced ABCs in the future.

The Secretary concurs with the Council's recommendation. Only part of the stock is available in Canadian waters (the larger fish swim farthest north into Canada, whereas smaller fish remain in U.S. waters), and only for part of the year. The entire ABC potentially could be harvested by U.S. fishermen before the stock reaches Canadian waters at the extreme end of its northward migration. If the U.S.-Canada combined harvest exceeds ABC in 1992, then future yield could be reduced. However, overfishing, as defined in the FMP, should not occur in 1992.

Apportionment to DAP, JVP, DAH, and TALFF

JVP and TALFF estimates are made for amounts of groundfish surplus to domestic processing and harvesting needs, but only if that surplus can be harvested without severely impacting another species that is fully utilized by the U.S. industry. In 1992, there are no surplus groundfish available for joint venture or foreign fishing operations. Consequently, the harvest guidelines in 1992 are designated entirely to DAP (which also equals DAH), and JVP and TALFF are set at zero.

II. 1992 Management Measures

The following management measures for the 1992 groundfish fishery have been designated as "routine." This designation means that the identified management measure has been analyzed previously and may be implemented and adjusted for a specified species or species groups and gear type after consideration at a single Council meeting and after announcement in the **Federal Register**, as long as the purpose of the limit is the same as originally established when these species and gears were designated as routine.

Cumulative Trip Limits

Trip limits will continue in 1992, with some modifications. In 1991, trip frequency limits often were used, which limited the number of landings (above a specified number of pounds) that could be made weekly, biweekly (in two-weeks), or twice-weekly. The Council did not recommend trip frequency limits for the beginning of 1992, except for daily landing limits for sablefish caught with nontrawl gear at certain times of year. Instead, the Council recommended cumulative trip limits which specify the total amount of fish that a vessel may land in a specified period of time (initially either two or four-week periods), without a limit on the number of landings that may be made.

Cumulative trip limits are expected to be more effective than trip frequency limits because they will: (1) Reduce trip-limit induced discards—in the past, as trip limits became smaller for most species, discards, generally are believed to have increased because it was more difficult, if not impossible, for fishermen to limit their harvest to such small amounts. By cumulating the amount of fish that may be landed, fishermen will be able to count catches from several trips, or may choose to make fewer, larger trips, reducing the necessity to discard fish caught in excess of a trip limit. Cumulative trip limits may be reduced later in the year if landings are too high. (2) Increase operating flexibility—cumulative trip limits will give fishermen more discretion in choosing the number and amount of trips as long as the cumulative trip limit is not exceeded. This flexibility will accommodate differences in fishing capacity, bad weather, mechanical breakdowns, and other unforeseen occurrences. (3) Enhance compliance—a cumulative limit is easier to compute and understand, and therefore should encourage compliance and facilitate enforcement. The States are expected to require that vessels keep copies of fish landing receipts on board for inspection by authorized enforcement officials. The use of cumulative trip limits applied to specified periods of time removes the need for any kind of prior declaration by vessel owners or operators. (4) Promote equity—previously, landings under a certain tolerance level (usually 3,000 pounds) were not counted toward trip landing and frequency limits. As trip limits were reduced, vessels making small, incidental landings potentially could take more than a vessel targeting on the same species. Under cumulative trip limits, all landings within a specified 2 or 4-week period are counted toward the cumulative limit for the period.

Cumulative trip limits are a slight variation on trip limits used in the past which are already designated as "routine" at 50 CFR 663.23(c)(1)(ii)(A). Cumulative trip limits achieve the same goals, and they discourage discards which often are unrecorded catch. Cumulative trip limits recommended for 1992 are designed to: keep landings within the harvest levels announced by the Secretary of Commerce, extend the fishing season, minimize disruption of traditional fishing and marketing patterns, reduce discards, discourage target fishing while allowing small incidental catches to be landed, and allow small fisheries to operate outside the normal season.

The Sebastes Complex (Including Yellowtail Rockfish and Bocaccio)

The trip limit for yellowtail rockfish (8,000 pounds in a 2-week period) is changed to apply north of Cape Lookout, Oregon, 118 nautical miles north of the north jetty at Coos Bay, Oregon, where the trip limit has been applied since 1985. The change to Cape Lookout is made because: (1) The distribution of yellowtail rockfish north of Coos Bay is far from uniform—yellowtail rockfish are much more abundant north of Cape Lookout; (2) the harvest of yellowtail rockfish south of Cape Lookout is not excessive, and trip limits south of Cape Lookout may have been unnecessarily restrictive; (3) a line at Cape Lookout would not be very disruptive to fishing patterns since it is an area of low fishing effort for any port; and (4) the change in statistical boundary will not create a recordkeeping problem for the State of Oregon. Accordingly, the 1991 landing frequency restrictions (including the tolerance for landings of yellowtail rockfish less than 3,000 pounds), and the biweekly and twice-weekly trip limit

options north of Coos Bay no longer apply in 1992.

Similarly, the cumulative trip limit for bocaccio (10,000 pounds in a 2-week period) is applied south of Cape Mendocino (the Monterey and Conception INPFC areas) rather than coastwide for much the same reasons: to restrict landings in the area where that species is most prevalent and where the fishery is most likely to occur. However, the data for bocaccio are not as complete as for yellowtail rockfish, and this provision may need to be modified in the future. In 1991, bocaccio was managed by a 5,000-pound trip limit, with no limit on the number of landings.

In the past, trip landing and frequency limits for the *Sebastes* complex (and yellowtail rockfish) were different north and south of Coos Bay. The State of Oregon required notification if a vessel fished both north and south of Coos Bay, or if it fished on one side and landed on the other. The Council recommended that this procedure be simplified, and the State notifications removed, so that the trip limit where the fish are landed is applied. The "lines" separating the different trip limits in 1992 (Cape Lookout, Oregon, for yellowtail rockfish and Cape Mendocino, California, for bocaccio) were selected with the understanding that few fishermen, if any, will have the incentive to fish in an area of restrictive management and land where limits are more liberal. If problems occur, this provision may be modified in the future.

The trip limit for the *Sebastes* complex (50,000 pounds in a 2-week period), which includes yellowtail rockfish and bocaccio as well as most other rockfish species, is changed so that it is cumulative (like yellowtail and bocaccio) and consistent coastwide. In 1991, the *Sebastes* complex was subject to trip frequency limits north of Coos Bay (like yellowtail rockfish), and a trip landing limit in southern waters.

Widow Rockfish

The cumulative trip limit for widow rockfish is 30,000 pounds in a 4-week period. A 4-week rather than 2-week period is used to accommodate the large catches that sometimes occur with midwater trawl gear. Widow rockfish aggregate in large schools, and large catches can occur in a number of minutes. Accordingly, the 1991 landing frequency provisions (including the tolerance for landings less than 3,000 pounds), and biweekly trip limit options no longer apply in 1992.

Pacific Ocean Perch

The trip limit for POP is the same as in 1991: 3,000 pounds or 20 percent of all fish on board, whichever is less, in landings of POP above 1,000 pounds. This is not a cumulative limit because it is intended to accommodate only incidental catches. It therefore applies to each fishing trip.

Deepwater Complex (Thornyheads, Dover Sole, and Trawl-Caught Sablefish)

The cumulative trip limit for the deepwater complex is 55,000 pounds in a 2-week period. Within this, no more than 25,000 pounds cumulative may be thornyheads. However, as in 1991, sablefish cannot exceed 25 percent of any landing of the deepwater complex containing more than 1,000 pounds of sablefish, and, in any landing, no more than 5,000 pounds of sablefish may be smaller than 22 inches. Accordingly, the 1991 landing frequency provisions (including tolerance for landings of the deepwater complex less than 4,000 pounds), and biweekly and twice-weekly trip limit options, do not apply in 1992.

Nontrawl Trip Limits for Sablefish

The level of trip limits in the nontrawl sablefish fishery prior to the relatively unrestricted "regular" season was the subject of considerable debate. These limits are intended to allow small incidental catches to be landed and to allow small fisheries to operate year-round. However, there were fears that too liberal a trip limit would encourage effort at the beginning of the year, which is contrary to the Council's intent. Consequently, the Council recommended a two-tier approach, starting the year with a 500-pound daily trip limit, and increasing the daily trip limit to 1,500 pounds on March 1. (A daily trip limit was recommended to preclude multiple landings from being made in a single day.) If 440 mt (approximately 12 percent of the 3,612 mt designated for nontrawl harvest) is projected to be taken before the regular season begins (April 1, 1992, or later), the 500-pound daily trip limit will be reimposed until the regular season begins. As in the past, a 500-pound daily trip limit will be imposed after the end of the regular season, on the date necessary to extend the nontrawl season as long as possible in 1992.

In 1991, the nontrawl trip limit was 1,500 pounds until the regular season opened on April 1, and was not applied on a daily basis. A 500-pound trip limit was implemented on May 24, and the nontrawl fishery closed on July 1 because its quota was reached. An emergency rule effective September 30 authorized a 300-pound daily trip limit until the end of 1991.

Several additional changes were recommended by the Council that would be implemented by a separate rulemaking, and have not yet been approved or implemented at the time the 1992 trip limits were announced. The Council recommended that the nontrawl fishery be closed for 72 hours before and after the regular season. The idea of such closed periods was proposed by the industry and generally endorsed by public testimony at the November meeting. The closure at the beginning of the season would preclude vessels from taking and retaining sablefish just before the regular season, and therefore would reduce the possibility of unexpectedly high landings in the first week, which can skew catch projections. The first 72-hour closure thus would encourage a "fair start" for the various components of the fleet. The 72-hour closure at the end of the regular season is intended to assist scientists in tabulation of the landings data, and would facilitate enforcement by clearly separating landings for vessels operating in the regular season. The 72-hour closures would not affect the progress of the fishery, would apply to all participants equitably, and would remove the perception of large amounts of fish being taken on board large vessels before the regular season begins. This measure is not routine, but is included in a proposed rule, now under consideration, to change the beginning of the regular season to 3 days prior to the first sablefish opening in Alaska.

Other Management Measures

The commercial trip limits for POP and recreational bag and size limits, which have not changed, are repeated below.

Secretarial Actions

The Secretary concurs with the Council's recommendations, and announces the following management actions:

A. General Definitions and Provisions

The following definitions and provisions apply to the 1992 management measures, unless otherwise specified in a subsequent notice:

(1) *A trip limit* is the total allowable amount of a groundfish species or species complex, by weight, or by percentage of fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(2) *A daily trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel from a single fishing trip in 24 consecutive

hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period.

Note.—In recent years, landing frequencies also were limited on a weekly, bi-weekly, and twice-weekly basis (for example, one landing of widow rockfish above 3,000 pounds in a one-week period, not to exceed 10,000 pounds). These landing frequency limits are not used as of January 1, 1992, EXCEPT for small daily trip limits for sablefish caught with nontrawl gear during certain parts of the year, or as otherwise announced later in the year.

(3) *A cumulative trip limit* is the maximum amount that may be taken and retained, possessed or landed per vessel in a specified period of time, without a limit on the number of landings or trips. Cumulative trip limits for 1992 initially apply to 2-week and 4-week periods. The 2-week and 4-week periods in 1992 are as follows, and start at 0001 hours Wednesday and end at 2400 hours Tuesday (local time), except for the last period which includes an extra 2 days to extend to the end of the year:

Two week periods: 1/1–1/14; 1/15–1/28; 1/29–2/11; 2/12–2/25; 2/26–3/10; 3/11–3/24; 3/25–4/7; 4/8–4/21; 4/22–5/5; 5/6–5/19; 5/20–6/2; 6/3–6/16; 6/17–6/30; 7/1–7/14; 7/15–7/28; 7/29–8/11; 8/12–8/25; 8/26–9/8; 9/9–9/22; 9/23–10/6; 10/7–10/20; 10/21–11/3; 11/4–11/17; 11/18–12/1; 12/2–12/15; 12/16–12/31.

Four-week periods: 1/1–1/28; 1/29–2/25; 2/26–3/24; 3/25–4/21; 4/22–5/19; 5/20–6/16; 6/17–7/14; 7/15–7/11; 8/12–9/8; 9/9–10/6; 10/7–11/3; 11/4–12/1; 12/2–12/31.

(4) Unless the fishery is closed, a vessel which has landed its 2-week (or 4-week) limit may continue to fish on the limit for the next 2-week (or 4-week) period so long as the fish are not landed (offloaded) until the next 2-week (or 4-week) period.

(5) All weights are round weights or round weight equivalents.

(6) Percentages are based on round weights, and unless otherwise specified, apply only to legal fish on board.

(7) *Legal fish* means fish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 663, the Magnuson Act, any notice issued under subpart B of part 663, and any other regulation or permit promulgated under the Magnuson Act.

(8) *Closure*, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See § 663.2)

(9) The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed 0–200 nautical miles offshore, or landed in Washington, Oregon, or California are presumed to have been taken and retained from the fishery management area, unless otherwise demonstrated by the person in possession of those fish.

B. Widow Rockfish

No more than 30,000 pounds cumulative of widow rockfish may be taken and retained, possessed, or landed per vessel in a 4-week period. (Widow rockfish also are called brownies.)

A 3,000-pound trip limit may be imposed at such time necessary to extend the fishery to the end of the year.

C. The Sebastes Complex (Including Yellowtail Rockfish and Bocaccio)

(1) *General.* (a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (thornyheads, idiot, or channel rockfish). Yellowtail rockfish (*S. flavidus*) are commonly called greenies. Bacaccio (*S. paucispinis*) are commonly called rock salmon.

(b) Cape Lookout means 45° 20′ 15″ N. latitude.

(c) Cape Mendocino means 40° 30′ 00″ N. latitude.

(2) *Cumulative trip limits.* Coastwide, no more than 50,000 pounds cumulative of the *Sebastes* complex may be taken and retained, possessed, or landed per vessel in a 2-week period. Of this 50,000 pounds, no more than 8,000 pounds cumulative may be yellowtail rockfish landed north of Cape Lookout, and no more than 10,000 pounds cumulative may be bocaccio landed south of Cape Mendocino.

D. Pacific Ocean Perch (POP)

The trip limit for Pacific ocean perch coastwide is 3,000 pounds or 20 percent of all legal groundfish onboard, whichever is less. If less than 1,000 pounds of Pacific ocean perch are landed, the 20 percent limit does not apply.

Note: Twenty percent of all legal groundfish on board including Pacific ocean perch is equivalent to 25 percent of all legal groundfish on board other than Pacific ocean perch.

E. Sablefish and the Deepwater Complex (Sablefish, Dover Sole, and Thornyheads)

(1) *1992 management goal.* The sablefish fishery will be managed to achieve the 8,900-mt harvest guideline in 1992.

(2) *Washington coastal tribal fisheries.* An estimate will be made of the catch to the end of the year for the Washington coastal treaty tribes. It is anticipated that these tribes will regulate their fisheries so as not to exceed their estimated catch. There will be no federally imposed tribal allocation or quota. In 1992 the estimated tribal catch is 300 mt, the same as in 1991.

(3) *Gear allocations.* After subtracting the tribal-imposed catch limit, the remaining harvest guideline will be allocated 58 percent to the trawl fishery and 42 percent to the nontrawl fishery.

Note: The 1992 harvest guideline for sablefish is 8,900 mt. After subtracting the 300-mt tribal-imposed catch limit, the remaining 8,600 mt is allocated 4,988 mt to the trawl fishery and 3,612 mt to the nontrawl fishery. The trawl and nontrawl gear allocations are harvest guidelines in 1992, which means the fishery will be managed so that the harvest guidelines are not exceeded, but will not necessarily be closed if they are reached.

(4) *Trawl trip and size limits.*—(a) *Trawl gear.* Trawl gear includes bottom trawls, roller or bobbin trawls, pelagic trawls, and shrimp trawls.

(b) "Deepwater complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), and thornyheads (*Sebastolobus* spp.). Sablefish also are called blackcod. Thornyheads also are called idiots, channel rockfish, or hardheads.

(c) *Trip limits.* Coastwide, no more than 55,000 pounds cumulative of the deepwater complex may be taken and retained, possessed, or landed per vessel in a 2-week period. Within this 55,000 pounds, no more than 25,000 pounds cumulative may be thornyheads. In any landing, no more than 25 percent of the deepwater complex may be sablefish, unless less than 1,000 pounds of sablefish are landed, in which case the percentage does not apply. In any landing, no more than 5,000 pounds of sablefish may be smaller than 22 inches (total length).

Note: Twenty-five percent of the deepwater complex (including sablefish) is equivalent to 33.333 percent of the legal thornyheads and Dover sole.

(5) *Nontrawl trip and size limits.* (a) Nontrawl gear means all legal commercial groundfish gear other than trawl gear (see 50 CFR 663.2), including

set nets (gill and trammel nets), traps or pots, longlines, commercial vertical hook-and-line gear, and troll gear.

(b) From 0001 hours January 1, 1992, through 2400 hours February 29, 1992, the daily trip limit for sablefish caught with nontrawl gear is 500 pounds. This trip limit applies to sablefish of any size.

(c) From 0001 hours March 1, 1992, through 2400 hours March 31, 1992, the daily trip limit is 1,500 pounds. However, if 440 mt is projected to be reached during this period, the daily trip limit may be reduced to 500 pounds through March 31, and will be announced in the **Federal Register**. These trip limits apply to sablefish of any size.

(d) The "regular" sablefish season, specified at 50 CFR 663.23(b)(2), begins on April 1. During the regular season, the only trip limit in effect applies to sablefish smaller than 22 inches (total length) which may comprise no more than 1,500 pounds or 3 percent of all legal sablefish onboard, whichever is greater. (See paragraph (6) regarding length measurement).

(e) Following the regular season, at 0001 hours on a date to be announced in the **Federal Register**, the daily trip limit for sablefish caught with nontrawl gear will be 500 pounds, which applies to sablefish of any size.

Note.—Currently, the regular season begins on April 1, and the 1,500-pound daily trip limit would continue through March 31 (unless 440 mt were harvested first). However, the Council has recommended that the regular season be changed so that it begins 3 days prior to the first sablefish opening in Alaska, with 72-hour closures immediately before and after the regular season. If the Council's recommendation is approved by the Secretary, and Alaska opens its sablefish fishery on May 15, 1992, as currently expected, then the 1,500-pound trip limit would be in effect from 0001 hours, March 1, through 2400 hours, May 8; the first 72-hour closure would occur from 0001 hours, May 9 through 2400 hours, May 11; and the regular season would start at 0001 hours, May 12, 1992. The Secretary is considering a proposed rule to change the starting date for the regular season. If this change is proposed in the **Federal Register** and subsequently approved, it will be implemented by a final rule.

(6) *Length measurement.* (a) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mulitation of the fish or the use of additional force to extend the length of the fish.

(b) For processed ("headed") sablefish,

(i) the minimum size limit is 15.5 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact; and,

(ii) the product recovery ratio (PRR) established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The PRR currently is 1.6 in Washington, Oregon, and California. However, the state PRRs may differ and fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official PRR.)

(7) No sablefish may be retained in such condition that its length has been extended or cannot be determined by the methods stated above in paragraph (6).

III. Recreational Fishing

Lingcod and Rockfish

(1) California

The bag limit for each person engaged in recreational fishing seaward of the State of California is 5 lingcod which may be no smaller than 22 inches (total length) and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) Oregon and Washington

The bag limit for each person engaged in recreational fishing seaward of the State of Washington and Oregon is 3 lingcod per day and 15 rockfish per day.

Note: A proposed rule published at 56 FR 47441 (September 19, 1991) would reduce the recreational daily bag limit for all rockfish north of Cape Leadbetter WA, from 15 to 12 fish. If approved by the Secretary, this bag limit would be effective in early 1992. (Adjustment of the bag limits for rockfish already has been designated as "routine.")

IV. Inseason Adjustments

At subsequent meetings, the Council will review the best data available and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to achieve the goals and objectives of the FMP and its implementing regulations.

V. Other Fisheries

A. Foreign Vessels

Receipt or retention of groundfish by foreign fishing or foreign processing vessels, if any, is limited by incidental allowances established under 50 CFR 611.70.

B. Experimental Fisheries

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

C. Shrimp and Prawn Fisheries

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.24, which state:

Section 663.24(a) Pink shrimp. The trip limit for a vessel engaged in fishing for pink shrimp is 1,500 pounds (multiplied by the number of days of the fishing trip) of groundfish species other than Pacific whiting, shortbelly rockfish, or arrowfish flounder (which are not limited under this paragraph).

Section 663.24(b) Spot and ridgeback prawns. The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 1,000 pounds of groundfish species per fishing trip.

However, if fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The final specifications and management measures for 1992 are made under the authority of and in accordance with the regulations implementing the FMP at 50 CFR parts 611 and 663.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 and a Supplemental EIS was prepared for Amendment 4 in accordance with the National Environmental Policy Act (NEPA). The alternatives considered and environmental impacts of the actions proposed in this notice are not significantly different than those considered in either the EIS or Supplemental Environmental Impact Statement (SEIS) for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an environmental assessment in accordance with paragraph 6.02c3(f) of the NOAA Administrative Order 216-6 because the alternatives and their impacts have not changed significantly and this action falls within the scope of the EIS and SEIS.

This action is in compliance with Executive Order 12291, and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Much of the data necessary for these specifications and management measures comes out of the current fishing season. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, and the need to have these specifications and management measures in effect at the beginning of the fishing year, there is good cause to waive the publication of proposed specifications in the **Federal Register** and a 30-day comment period on the proposed specifications. Amendment 4 to the FMP, implemented on January 1, 1991, recognizes these timeliness considerations, and sets up a system where the interested public is notified, through **Federal Register** notice of meetings and through Council mailings, of the development of these measures, and is provided the opportunity to comment during the Council process. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in August, September, October, and November 1991, which resulted in these recommendations from the Council. Additional public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

The Administrative Procedure Act requires that publication of an action be made not less than 30 days before its effective date unless the Secretary finds and publishes with the rule good cause for an earlier effective date. Good cause for waiving the delay in effectiveness is found if the delay is impracticable, unnecessary, or contrary to the public interest. These specifications announce the harvest goals and the management measures designed to achieve those harvest goals in 1992. A delay in implementation could compromise the management strategies that are based on the projected landings from these trip limits. Therefore, a delay in effectiveness is impracticable and contrary to the public interest and these actions are effective on January 1, 1992.

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 9, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-980 Filed 1-9-92; 4:20 pm]

BILLING CODE 3510-22-M

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50 CFR Part 642

[Docket No. 910650-1218]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of bag limit reductions.

SUMMARY: NMFS reduces to zero the bag limits in the exclusive economic zone (EEZ) for king mackerel from the Gulf migratory group. NMFS has determined that the recreational allocation for the Gulf migratory group of king mackerel was reached on January 12, 1992. This reduction of the bag limits is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: Reduction of the bag limits is effective on January 13, 1992, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR part 642.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1 1991, through June 30, 1992) set the recreational allocation at 3.91 million pounds. Under § 642.22 (b), after consulting with the Councils, NMFS is required to reduce to zero the bag limits for a king mackerel migratory group when the appropriate recreational allocation for that group has been reached, or is projected to be reached, and when that group is overfished, by publishing a notice in the **Federal Register**. NMFS, based on current statistics, has determined that the recreational allocation of 3.91 million pounds for the Gulf migratory group of king mackerel was reached on January 12, 1992. NMFS also finds, based on the most recent stock assessment, that the Gulf migratory group of king mackerel remains overfished. NMFS has consulted with the Councils, and they agree with this finding and concur in this action. Hence, the bag limits for king mackerel from the Gulf migratory group are reduced to zero effective January 13, 1992, through June 30, 1992, the end of the fishing year. During this period, king mackerel from the Gulf migratory group caught in the EEZ in the recreational fishery must be returned immediately to the sea.

NMFS previously determined that the commercial king mackerel quota for the western zone of the Gulf migratory group had been reached and closed the commercial fishery for Gulf migratory group king mackerel in that zone (56 FR 49853, October 2, 1991). Through June 30, 1992, Gulf migratory group king mackerel may not be harvested from or possessed in the western zone of the EEZ and king mackerel from that zone may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in king mackerel from the western zone of the Gulf migratory group that were harvested, landed, and bartered, traded, or sold prior to the commercial fishery closures and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22 (b) and complies with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et. seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 9, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1065 Filed 1-10-92; 12:35 pm]

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Proposed Rules

Federal Register
Vol. 57, No. 10
Wednesday, January 15, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-91-458]

Proposed Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 932 for the 1992 fiscal year (January through December) established for that order. The proposal is needed for the California Olive Committee (committee) to incur operating expenses during the 1992 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Fund to administer this program are derived from assessments on handlers.

DATES: Comments must be received by January 27, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6450. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 932 [7 CFR Part 932] regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6 handlers of California olives regulated under this marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most, but not all, of the olive produsers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable olives received by regulated handlers from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers and handlers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected olive receipts (in tons). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on December 2, 1991, and unanimously recommended 1992 fiscal year expenditures of $1,832,230 and an assessment rate of $20.68 per ton of assessable olives received by handlers under M.O. 932.

In comparison, 1991 fiscal year budgeted expenditures were $2,115,975 and the assessment rate was $20.23 per ton.

Major expenditure items budgeted for the 1992 fiscal year compared with those budgeted in 1991 (in parentheses) are $348,230 ($354,975) for program administration, $65,000 ($126,000) for production research, $786,000 ($830,000) for consumer advertising, $516,000 ($632,000) for food service advertising, and $117,000 ($173,000) for public relations. The $283,745 decrease in budgeted expenditures from 1991 is attributed to decreases in production research, consumer advertising, mainly foodservice advertising, and public relations, and administrative costs. Expenses will be covered by both assessment income and reserves.

Estimated assessment income is approximately $1,182,730 for the 1992 fiscal period based on handler receipts of 57,192 tons of assessable olives during the 1991–92 crop year (August-July). This amount will be augmented by approximately $650,000 from reserve funds to enable the committee to pay its estimated expenses. The committee's reserves are well within the maximum amount authorized by the order—one fiscal year's expenses. Last year's assessment income was approximately $2,116,058 on receipts of 104,600 assessable tons.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs would be offset by the benefits

derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approvals for the olive program need to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 932 be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 932.225 is added to read as follows:

§ 932.225 Expenses and assessment rate.

Expenses of $1,832,230 by the California Olive Committee are authorized, and an assessment rate of $20.68 per ton of assessable olives is established, for the fiscal year ending on December 31, 1992. Unexpended funds from the 1991 fiscal year may be carried over as a reserve.

Dated: January 9, 1992.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1051 Filed 1–14–92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1065

[DA–92–02]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This action invites written comments on a proposal to revise certain provisions of the Nebraska-Western Iowa Federal milk marketing order for the months of January through August 1992. The proposed revision would reduce the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status by 10 percentage points (from 30 to 20 percent of receipts) for the months of January through March and by 20 percentage points (from 40 to 20 percent of receipts) for the months of April through August. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments are due no later than January 22, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administration of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.7(b) of the order, the revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of January through August 1992.

All persons who want to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include January in the revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages set forth in § 1065.7(b). The revision would lower the shipping percentages for supply plants to 20 percent of receipts during the months of January through August 1992. The specific revision would reduce the supply plant shipping percent by 10 percentage points during the months of January through March (from 30 percent to 20 percent of receipts) and by 20 percentage points during the months of April through August (from 40 percent to 20 percent of receipts).

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. The adjustment can be made to help encourage additional milk shipments or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Under the Nebraska-Western Iowa order, the supply plant shipping percentage is 40 percent or more of the total receipts of Grade A milk received from dairy framers and cooperative associations. A revision signed October 3, 1989 (54 FR 41240) reduced the supply plant shipping percentage by 10 percentage points (from 40 percent to 30 percent of receipts) indefinitely for the months of September through March.

This action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am has projected that there will be ample supplies of direct ship producer milk located in the general area of the Nebraska-Western Iowa distributing plants to meet the fluid needs of such plants. Absent a revision, Mid-Am contends that costly and inefficient movements of milk would have to be made in order to maintain pool status of the milk of its members who have historically supplied the fluid needs of the market.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.7(b) for the months of January through August 1992 to prevent uneconomic shipments of milk, and to assure that dairy farmers long associated with the fluid milk market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

PART 1065—[AMENDED]

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on: January 9, 1992.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 92–1049 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1065

[DA–92–03]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Nebraska-Western Iowa Federal milk marketing order for the months of January through August 1992. The proposed suspension would reduce the amount of milk that must be transferred from supply plants to pool distributing plants and remove the requirement that a producer's milk be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments are due no later than January 22, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of January through August 1992:

In § 1065.6, the words "during the month";

In § 1065.7(b)(1), the words "not more than one half of"; and,

In § 1065.13, paragraph (d)(1).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include January in the suspension period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would suspend certain provisions of the order for the months of January through August 1992. The suspension would reduce the amount of milk that must be transferred from supply plants to pool distributing plants and allow milk to be diverted to a nonpool plant without being physically received at a pool plant during the month.

Currently the order defines a supply plant as a plant from which Grade A milk is shipped to a pool distributing plant. The order provides that to qualify as a pool supply plant, the supply plant must transfer or divert a specified percentage of its receipts of milk to pool distributing plants. The order further provides that a supply plant must ship milk to a distributing plant each month and that not more than one-half of the qualifying shipments may be met through the direct shipment of milk from farms to pool distributing plants. The order also provides that a dairy farmer's milk is not eligible for diversion during a month unless at least one day's production is physically received at a pool plant. The proposed suspension would remove the requirement that milk be transferred from a supply plant to a distributing plant each month, allow all direct-shipped milk to count as a qualifying shipment, and remove the requirement that a dairy farmer's milk be physically received at a pool plant each month.

This action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am projects that there will be ample supplies of direct ship producer milk located in the proximity of the distributing plants to meet the fluid milk needs of the market. Mid-Am contends that it is impractical to require producer milk located some distance from pool plants to be physically received once during the month, when the milk can more economically be diverted directly to manufacturing plants in the production area. In addition, Mid-Am contends that it would be inefficient to require that milk be transferred from supply plants to distributing plants when the fluid milk needs of the market can be supplied by the direct shipment of milk from farms to distributing plants. Absent a suspension, Mid-Am contends that costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

PART 1065—[AMENDED]

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on: January 9, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–1050 Filed 1–14–92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1209

[FV–91–276]

RIN 0581–AA49

Mushroom Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and meeting notice.

SUMMARY: The U.S. Department of Agriculture (Department) proposes to establish a national mushroom promotion, research, consumer information, and industry information program. The program would be funded by assessments collected from producers and importers of fresh mushrooms and administered by a Mushroom Council (Council) consisting of at least four but more than nine producer and importer members. This action is authorized by the Mushroom Promotion, Research, and Consumer Information Act of 1990. In addition to requesting comments on this proposal, this action gives notice of a public meeting on this proposal.

DATES: Comments on the proposal must be received by February 14, 1992. A public meeting to give interested persons an opportunity to express their views or ask questions on the proposed order will convene at 9 a.m., eastern time on February 5, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, USDA P.O. Box 96456, room 2533–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular working hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register.** Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for the Agricultural Marketing Service, USDA.

The public meeting will be held at the United States Department of Agriculture, room 1079, South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2533–S, Washington, DC 20090–6456, telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: This proposed order is being published pursuant to the Mushroom Promotion, Research, and Consumer Information Act of 1990 (subtitle B of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, November 28, 1990, 7 U.S.C. 6101–6112) hereinafter referred to as the Act.

This proposal contained herein has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The most recent available census of agricultural producers indicates that there are 460 mushroom producers in the United States, an estimated 200 of whom would be subject to the proposed order. Of these 200 estimated producers, a minority would be classified as small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include mushroom handlers and importers, have been defined as those having annual receipts of less than $3,500,000. There are approximately 100 handlers, including producers who are also handlers, and not more than 3 importers, out of approximately 30 importers, who would be subject to the provisions of the proposed order, a majority of whom would be classified as small entities. The proposed order would require each mushroom producer and importer who produces or imports 500,000 pounds or more of fresh mushrooms per year to pay an assessment not to exceed one cent per pound. In addition, an estimated 100 first handlers of fresh mushrooms, a majority of whom would be classified as small firms, would be required to collect and remit the assessments.

Although the maximum annual assessment collection could total $4.5 million beyond the fourth year of the order, the economic impact of a one cent or less assessment per pound on each producer or importer subject to the order would not be significant. The proposed order also imposes a reporting and recordkeeping burden on producers, first handlers, and importers. This burden should average approximately seven hours per year, so its economic impact would not be significant. In addition, the promotion, research, consumer information, and industry information program funded by assessments is expected to benefit producers, handlers, and importers by strengthening the mushroom industry's position in the marketplace; maintaining and expanding existing markets and uses for mushrooms; and developing new markets and uses for mushrooms. Such benefits are expected to outweigh the costs of the program. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Public Meeting

Notice is given that a public meeting will be held beginning 9 a.m. eastern time on February 5, 1992, in room 1079 at the United States Department of Agriculture, South Building, 14th and Independence Avenue, SW., Washington, DC.

The meeting will be conducted by a presiding officer chosen by the Department. The proceedings of such meeting will be transcribed and considered in the development of a final rule. The purpose of this meeting is to provide an opportunity for a full discussion on the proposal to facilitate a better understanding of the intent and application of the proposed rule.

Anyone wishing to present data, views, or arguments concerning this proposal should do so through exhibits, written statements, or oral presentations. All those making oral presentations are encouraged to also submit their presentations in writing. One original and three copies of written statements must be provided for the

record. Persons attending the meeting will be allowed to ask questions directed at participants giving oral presentations.

Any interested person will be given an opportunity to appear and be heard with respect to matters relevant and material to the proposed order. However, the presiding officer may limit the number of times and the amount of time that any one person may be heard and exclude views and data which are immaterial, irrelevant, or unduly repetitious. Such action is intended to prevent undue prolongation of the meeting.

Copies of the transcript of the meeting will not be available for distribution through the Department. However, the transcript of the meeting will be available for public inspection at the Office of the Docket Clerk during business hours. Anyone wishing to purchase a copy of the transcript should make arrangements with the court reporter at the meeting.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this action have been approved by the Office of Management and Budget (OMB) and assigned OMB number 0581–0093, except for the Council nominee background statement form which is assigned OMB number 0505–0001. This action sets forth the provisions of a proposed nationwide program for mushroom promotion, research, consumer information and industry information to be funded by mushroom producers and importers. Information collection requirements that are included in the proposed order include:

(1) A requirement that each first handler and importer who handles or imports at least 500,000 pounds of fresh mushrooms annually must file reports at specified intervals. The estimated number of first handlers and importers filing such reports is 103, each submitting a maximum of 12 reports per year, with an estimated average reporting burden of 30 minutes per report. However, these persons may alternatively prepay assessments annually, requiring only an initial report of anticipated assessments and a final annual report of actual handling;

(2) An exemption application for persons who produce less than 500,000 pounds of fresh mushrooms annually concerning exemptions from assessments and recordkeeping requirements. The estimated number of persons filing this application is 290, each submitting one application per year, with an estimated average reporting burden of 15 minutes per application;

(3) A referendum ballot to be submitted in a referendum prior to implementation of the program and periodically thereafter to indicate whether producers and importers favor continuance of the order. The estimated number of voters completing this ballot is 203, each submitting one ballot approximately every five years, with an estimated average reporting burden of 6 minutes per ballot;

(4) A nominee background statement form for Council membership. The estimated number of individuals completing this form is 18 during the first year of the order and approximately 6 per year thereafter. Two eligible individuals will be nominated for each open position on the Council, each of whom will have an estimated average reporting burden of 6 minutes per form; and

(5) A requirement to maintain records sufficient to verify reports submitted under the order. The estimated number of persons required to comply with this requirement is 203, each of whom will have an estimated average recordkeeping burden of 7 minutes per year.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national mushroom promotion, research, consumer information, and industry information program. This program would be funded by an assessment on producers and importers not to exceed one cent per pound of fresh mushrooms.

The Act provides that the Secretary may propose the issuance of an order, or an association of mushroom producers or any other person that will be affected by the provisions of the Act may request the issuance of, and submit a proposal for, such an order. After receipt of a request and proposal for an order, or when the Secretary determines to propose an order, the Act provides that the Secretary shall publish the proposed order and give due notice and opportunity for public comment.

In addition, the Act requires that any order issued thereunder shall contain certain specified terms and conditions. Such terms and conditions include provisions concerning the composition and establishment of a Mushroom Council (Council), and the powers and duties of such Council. Also included under terms and conditions which are required to be in an order are provisions concerning assessments, books and records, and the availability of information.

The Act provides that the Council would be composed of at least four and not more than nine members. There would be four geographic regions established, which would represent the geographic distribution of mushroom production throughout the United States, with one member who is a producer nominated and appointed from each region that produces, on average, at least 35,000,000 pounds of mushrooms annually. There would be a fifth region established, which would represent importers throughout the United States, with one member who is an importer nominated and appointed from such region importing, on average, at least 35,000,000 pounds of mushrooms annually. Subject to the nine-member limit on the number of Council members, the Secretary would appoint an additional member to the Council from a region for each additional 50,000,000 pounds of production or imports per year, on average, within the region. Should, in the aggregate, regions be entitled to levels of representation that would exceed the nine-member limit on the Council, then those regions entitled to representation in excess of the basic quantity used in establishing representation on the Council would have representation allocated among them based on production or importation so that the Council does not exceed its nine-member limit.

In response to an invitation to submit proposals in the January 30, 1991, issue of the **Federal Register** (56 FR 3425), one proposal for a complete promotion, research, and consumer information order was received from the American Mushroom Institute (AMI), a national trade association. In addition, several provisions to be incorporated into a proposed promotion, research, and consumer information order were received from United Foods, Inc. (United), a mushroom producer. The Department reviewed the submissions and issued a proposed rule containing them in the October 4, 1991, issue of the **Federal Register** (56 FR 50283). The Department received seven comments on that proposed rule.

Comments were received from the AMI and the Mushroom Council; United; the Elite Mushroom Co., Inc.; the National Farmers Organization; the National Farmers Union; the American Agricultural Movement Inc.; and the

American Institute of Certified Public Accountants. AMI and United commented in support of their own proposals; one commenter was opposed to a majority of United's proposed order provisions; three commenters specified their organizations' policies toward research and promotion programs; and one commenter suggested technical language to be incorporated into several of AMI's and United's order provisions.

Two comments were directed towards United's definition of producer. Both comments were favorable. The Department has accepted this definition. It is in accordance with section 1925(11) of the Act and has been incorporated into § 1209.14 of the proposed order.

One commenter recommended that United's provision proposing that the Council shall not contract with any person who is a producer or importer for the purpose of mushroom promotion be incorporated into the proposed order. Another commenter opposed the incorporation of this provision. The Department has accepted this provision as reasonable and within the intent of section 1925(e) of the Act. Therefore, this provision has been incorporated with modification into § 1209.38(j) of the proposed order.

One commenter recommended a change in the language found in § 1209.39(f) of AMI's proposed order. This change focused on the requirements for auditing the Council's financial statements, including which accounting principles and auditing standards should be followed. The Department has accepted this language and has incorporated it into § 1209.39(f) of the proposed order.

One commenter recommended that United's provision proposing that no funds collected under the Act, be used to defray, or make payment of costs incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing the order be incorporated into the proposed order. Another commenter opposed the incorporation of this provision. The Department has accepted this provision as being in accordance with § 1925(h) of the Act. Therefore, this provision has been incorporated into § 1209.50(c) of the proposed order.

Three commenters expressed their concern that imported, canned mushrooms were not included in the Act and that such as omission would give foreign producers a competitive advantage over domestic producers. Section 1923(8) of the Act defines *mushrooms* as "all varieties of cultivated mushrooms grown within the United States for the fresh market, or imported into the United States for the fresh market, that are marketed, except that such term shall not include mushrooms which are commercially marinated, canned, frozen cooked, blanched, dried, packed in brine, or otherwise processed, a determined by the Secretary." Therefore, these comments are denied.

Two commenters went further to express their concern that such a program could eventually decrease the competitiveness of domestic small and medium-sized mushroom producers relative to foreign producers. In response, there has been a dramatic increase of fresh production over processed production since 1970. Department statistics for the period 1970–88 indicate an increase in fresh production from 58 million pounds in 1970 to 484 million pounds in 1988, while processed production increased from 149 million pounds in 1970 to 184 million pounds in 1988. In 1970 fresh production accounted for 28 percent of total production, while in 1988 fresh production accounted for 72 percent of total production. Further, Department statistics for 1990 indicate that total fresh mushroom imports into the United States were approximately 2.3 million pounds compared to total U.S. fresh production of 512 million pounds. These statistics indicate that imported fresh mushrooms are significantly less than 1 percent of total U.S. fresh production. With fresh mushroom imports comprising such a small share of the U.S. fresh mushroom market, there is no evidence that small, medium, or large domestic producers would be exposed to any significant competitive disadvantage should the program go into effect.

One commenter recommended that, in order to test the program, persons subject to the Act should establish a voluntary research and promotion program for a period of at least two years. This comment cannot be adopted because it is not in accordance with the Act. The Act requires the issuance of a proposed order by the Department. Interested persons are being provided an opportunity to comment on the proposed order before the Department issues a final order. The Act also requires that a referendum be conducted among producers and importers before the order can become effective. The outcome of such a referendum will ascertain whether the final order will go into effect.

Five commenters addressed the issue of voting in referenda. All of the commenters were in favor of a referendum prior to the implementation of any program. Such a referendum is required in the Act. Two commenters provided comments on referendum procedures. Section 1926(c) of the Act specifies that "referenda conducted pursuant to this section shall be conducted in such a manner as determined by the Secretary." Referenda procedures are not intended to be part of the proposed order and as such have not been incorporated into the order. At a later date, the Department intends to publish proposed rules and regulations, which will include referenda procedures, for public comment. Therefore the comments on referenda procedures are denied at this time.

One commenter proposed that the Department hold three public meetings in different regions of the United States to discuss the proposed order. This is not feasible because the number of producers and importers in the mushroom industry is relatively small and the cost of holding such meetings would be excessive. Therefore, it has been determined that one public meeting will be held at the United States Department of Agriculture in Washington, DC, and the comment is denied.

One commenter recommended that the program be subject to review in referendum every three years and subject to review at any time on request by 10 percent of the producers and importers. This comment cannot be accepted because it is not consistent with the Act.

One commenter recommended that after a research and promotion program is in effect, all succeeding referenda should be financed and conducted by the federal government. This comment cannot be accepted as it is not in accordance with the Act. As specified in section 1925(g)(3) of the Act, assessments shall be used to cover those administrative costs incurred by the Secretary in implementing and administering the order, except for the salaries of Government employees incurred in conducting referenda.

One commenter recommended that the Department interpret the term "majority" to mean a two-thirds majority of producers and importers voting in a referendum. This comment cannot be accepted since the Act does not provide that majority shall mean anything other than a number greater than half of the total. In regard to the initial referendum, section 1926(a)(2) of the Act specifies that "the order shall become effective, * * *, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually

produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum." In regard to succeeding referenda, section 1926(b)(2) of the Act states that "if, * * *, The Secretary determines that the suspension or termination of an order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, * * *." Therefore, the comment is denied.

One commenter recommended that the disbursement of funds collected under the program be controlled by a board of producers elected by the producers assessed and that the operations of the program be controlled by such a producer board. This comment is in accordance with section 1925(b)(1)(B) of the Act which specifies that "the members of the Council shall be mushroom producers and importers appointed by the Secretary from nominations submitted by producers and importers in the manner authorized by the Secretary * * *." The commenter went further to recommend that general farm organizations be allowed to appoint a producer representative to the board. This comment is denied because it is inconsistent with the aforementioned section of the Act.

Four commenters favored a prohibition on political and lobbying activities by the Council. Such a prohibition is found in § 1209.53 of the proposed order. This provision is in accordance with section 1925(h) of the Act which concerns the influencing of government action or policy.

Three commenters requested that the Department allow producers and importers the right to demand and receive a refund of assessments collected by the Council. Such a provision is not in accordance with the Act. The Act contains no right of refund provision, authorizing or requiring the refund of assessments. It is not the intent of the Act to allow refunding by producers and importers. Therefore, these comments are denied.

Five commenters recommended the incorporation of United's provision proposing the use of a pre-approval and post-completion or annual cost/benefit analysis of all programs, plans, and projects. United's provision further provides that such an analysis should be conducted by an independent contractor. One commenter opposed the incorporation of the provision. Such a provision would prove burdensome to the Council in terms of time- and cost-effectiveness relative to programs, plans, and projects. Section 1925(c)(4) of the Act specifies that the Council shall "propose, receive, evaluate, approve, and submit to the Secretary for approval * * * budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information as well as to contract and enter into agreements with appropriate persons to implement such plans or project." Section 1925(d)(3) of the Act further specifies that "no plan or project of promotion, research, consumer information, or industry information, or budget, shall be implemented prior to its approval by the Secretary." The Act provides the appropriate safeguards to allow the Council to effectively and efficiently administer the program without requiring a mandatory independent cost/benefit analysis of all programs, plans, and projects. Therefore, the comments recommending the incorporation of United's provision relevant to cost/benefit analysis are denied, and the provision is not included in the proposed order language.

Three commenters requested that the Department reconsider its denial of United's provision concerning the requirement of a producer and importer referendum to increase the assessment rate. United's provision was not incorporated in the proposed rule because the conduct of such a referendum to approve an assessment increase is not required or anticipated in the provisions of the Act. The Act authorizes the rate of assessment to be determined by the Council using a formula of annual increments specified in the Act. The Council, with approval of the Secretary, may change the rate of assessment at any time, except that the effective rate of assessment, as specified in the Act, may increase incrementally, but not exceed an annual rate of one cent per pound of mushrooms over a four year period. There is no provision in the Act requiring reauthorizing a referendum to approve assessment increases already specified in the Act. Therefore, these comments are denied.

One commenter requested that the Department reconsider its denial of two other provisions submitted by United concerning the definition of promotion and the provision concerning creditable promotion and advertising. United's provisions were not incorporated into the proposed rule because they were determined to be beyond the authority, intent, or scope of the Act. Therefore, this comment is denied.

Three commenters recommended that United's two provisions proposing that all persons producing or importing mushrooms into the United States should certify through an independent auditor and report to the Council and the Secretary the amount of mushrooms produced or imported annually be incorporated into the proposed order. Another commenter suggested several technical corrections to be included into these provisions. A fifth commenter was opposed to the inclusion of these provisions into the order. The first three comments are denied because they go beyond the authority and scope of the Act. As a consequence of this denial, the fourth comment is inapplicable. The inclusion of such a reporting requirement would be burdensome to persons who are not subject to the Act in terms of time and financial resources. Sections 1209.52, 1209.60, and 1209.61 of the proposed order should provide the necessary safeguards in the collection of assessments which is the intent of this proposed provisions. These provisions are in accordance with section 1925(i)(1) of the Act which specifies "that the order shall require that each first handler and importer of mushrooms maintain, and make available for inspection, such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order."

Three commenters recommended that the Council disclose its financial statements to persons who are subject to the Act. Section 1209.39(e) of the proposed order provides for such disclosure. One commenter also recommended a change in the language used in § 1209.39(f) of the proposed order. This language, as previously mentioned, has been incorporated into § 1209.39(f).

One commenter recommended that United's provision proposing that the Council ensure that funds are expended by the Council into mushroom market areas in reasonable proportion to the assessments collected from producers in those areas be incorporated into the proposed order. Another commenter opposed the incorporation of this provision into the order. This provision is not consistent with the intent of the Act. The primary purpose of the Act is to establish a national promotion, research, consumer information, and industry information program. According to section 1922(b) of the Act, the program is designed to "strengthen the mushroom industry's position in the marketplace; maintain and expand existing markets and uses for mushrooms; and develop new markets and uses for mushrooms." Therefore, the

comment in favor of this change is denied.

One commenter recommended that United's three provisions prohibiting production controls be incorporated into the proposed order. Another commenter opposed the incorporation of these provisions. These provisions are not included because § 1209.40(a)(2) of the proposed order already specifies that "nothing in this subpart may be construed to authorize mandatory requirements for quality control, grade standards, supply management programs, or other programs that would control production or otherwise limit the right of individual producers to produce mushrooms." It has been determined that it is not necessary to repeat this information in the proposed order. Further, this provision is in accordance with section 1922(c) of the Act which declares that "nothing in this subtitle may be construed to provide for the control of production or otherwise limit the right of individual producers to produce mushrooms." Therefore, the comment in favor of the United proposal in this area is denied.

One commenter recommended that United's definition of *research* be incorporated into the proposed order. Another commenter opposed the incorporation of this provision. United's definition is denied because it goes beyond the scope of the Act. Further, United's definition is redundant in terms of including a prohibition on production controls. The Act and the proposed order specifically prohibit the imposition of production controls.

One commenter recommended that a substantial portion of the program's funds be used to purchase surplus commodities in the market and that such supplies be moved in the most economical manner to starving people in other countries. This comment is denied because it is beyond the authority, intent, and scope of the Act. The purpose of this program is to engage in a national program of promotion, research, consumer information, and industry information, and there is no authority in the Act to purchase surplus commodities.

In addition to the preceding review and consideration of comments, minor editorial changes have been made to several of the proposed order provisions for the purpose of clarity.

The order provisions as proposed by the Department are summarized as follows:

Sections 1209.1–1209.20 of the proposed order define certain terms which are used in the order.

Sections 1209.30–1209.39 of the proposed order concern the establishment, membership, nominations, appointment, term of office, vacancies, procedure, compensation and reimbursement, powers, and duties of a Mushroom Council, which would be the body organized to administer the order subject to the oversight of the Secretary of Agriculture.

Section 1209.40 of the proposed order would authorize the Council to receive, develop, and evaluate programs, plans, and projects for promotion, research, consumer information, and industry information with respect to fresh mushrooms and mushroom products. The Secretary would approve such programs, plans or projects prior to their implementation.

Section 1209.50 of the proposed order would authorize the Council to incur expenses necessary for the performance of its duties and to recommend an annual budget. Section 1209.51 of the proposed order would provide for the collection of assessments. The maximum assessment rate would be one cent per pound of non-exempt fresh mushrooms produced domestically or imported into the United States. The assessment section also contains the procedures to be followed by first handlers and importers when remitting assessments; the procedures to by followed by producers and importers seeking exemption from assessments; the establishment of a late payment charge and interest charges for unpaid or late assessments; the collection of assessments through approved third-party organizations; and the prepayment of assessments. Section 1209.52 of the proposed order would prohibit funds received under this program from influencing governmental action, with specified exceptions.

Sections 1209.60–1209.62 of the proposed order contain reporting and recordkeeping requirements for persons subject to the order, and provide that all information obtained by the Council or the Department from books and reports required by the order would be kept confidential.

Sections 1209.70–1209.77 of the proposed order concern miscellaneous provisions which include the right of the Secretary; procedures of the suspension or termination of the order; proceedings after the termination of the order; effect of termination or amendment of the order; personal liability of Council members; handling of intellectual property arising from funds collected by the Council; amendments to the order; and separability of order provisions.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

It is hereby proposed that title 7 of the Code of Federal Regulations be amended by adding part 1209 to read as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

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1209.75 Patents, copyrights, inventions, publications, and product formulations.
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Authority: The Mushroom Promotion, Research, and Consumer Information Act of 1990, Pub. L. 101-624, 104 Stat. 3854 (7 U.S.C. 6101 et seq.).

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

Definitions

§ 1209.1 Act.

Act means the Mushroom Promotion, Research, and Consumer Information Act of 1990, Subtitle B of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101-624, 7 U.S.C. 6101-6112, and any amendments thereto.

§ 1209.2 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1209.3 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

§ 1209.4 Council.

Council means the administrative body referred to as the Mushroom Council established under § 1209.30 of this subpart.

§ 1209.5 Department.

Department means the United States Department of Agriculture.

§ 1209.6 First handler.

First handler means any person who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

§ 1209.7 Fiscal year.

Fiscal year means the 12-month period from January 1 to December 31 each year, or such other period as recommended by the Council and approved by the Secretary.

§ 1209.8 Importer.

Importer means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

§ 1209.9 Industry information.

Industry information means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

§ 1209.10 Marketing.

(a) *Marketing* means the sale or other disposition of mushrooms in any channel of commerce.

(b) *To market* means to sell or otherwise dispose of mushrooms in any channel of commerce.

§ 1209.11 Mushrooms.

Mushrooms means all varieties of cultivated mushrooms grown within the United States and marketed for the fresh market, or imported into the United States and marketed for the fresh market, except such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed in such manner as the Council, with the approval of the Secretary, may determine.

§ 1209.12 Part and subpart.

Part means this mushroom promotion and research order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the mushroom promotion and research order.

§ 1209.13 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1209.14 Producer.

Producer means any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

§ 1209.15 Program, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1209.16 Promotion.

Promotion means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

§ 1209.17 Region.

Region means one of the described geographic subdivisions of the production area described in § 1209.30(b) or as later realigned or reapportioned pursuant thereto, or the import region described in § 1209.30(c).

§ 1209.18 Research.

Research means any type of study to advance the image, desirability, safety, marketability, production, product development, quality, or nutritional value of mushrooms.

§ 1209.19 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1209.20 United States and State.

(a) *State* means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *United State* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Mushroom Council

§ 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under § 1209.33, except that, as provided in paragraph (c), importers shall be appointed by the Secretary to the Council under § 1209.33 once average imports for an annual period determined by the Secretary reach 35,000,000 pounds of mushrooms.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into four geographic regions and the number of Council members from each region shall be as follows:

Region 1—including Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Ohio, Kentucky, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Minnesota, North Dakota, South Dakota, Montana, Colorado, and Wyoming—*2 Members*

Region 2—including Pennsylvania, Delaware, New Jersey, the District of Columbia, West Virginia, Virginia, and Maryland—*3 Members*

Region 3—including Washington, Oregon, Idaho, Utah, Arizona, California, Nevada, Alaska, and Hawaii—*3 Members*

Region 4—including New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Alabama, Mississippi,

Georgia, Tennessee, North Carolina, South Carolina, Florida, and the Commonwealth of Puerto Rico—1 Member

(c) Importers shall be represented by a single, separate region, referred to as Region 5, consisting of the United States as defined in § 1209.20(b) when average imports for an annual period determined by the Secretary equal or exceed the 35,000,000 pound minimum.

(d) At least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b), or modification of the number of members from such regions, as determined under the rules established in paragraph (e), or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d):

(1) Each region that has a mushroom production of 35,000,000 pounds or more, on average, for an annual period shall be entitled to one representative on the Council.

(2) As provided in paragraph (c), importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 35,000,000 pounds of mushrooms annually.

(3) Each region shall be entitled to representative by an additional Council member for each 50,000,000 pounds of average annual production or imports in excess of the initial 35,000,000 pounds within the region qualifying the region for representation.

(4) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e) (1), (2) and (3) that would exceed the nine-member limit on the Council under the Act, the regions shall be entitled to representation on the Council as follows:

(i) Each region first shall be assigned one representative on the Council pursuant to paragraphs (e) (1) and (2).

(ii) Then, each region with 50,000,000 pounds of average annual production or imports in excess of the initial 35,000,000 pounds of production or imports qualifying the region for representation shall be assigned one additional representative on the Council, except that if under such assignments all five regions, counting importers as a region, if applicable, would be entitled to additional representatives, that region with the smallest annual average volume, in terms of production or imports, will not be assigned an additional representative.

(iii) After members are assigned to regions under paragraphs (e)(4) (i) and (ii), if less than the entire nine seats on the Council have been assigned to regions, the remaining seats on the Council shall be assigned to each region for each 50,000,000 pound increment of average annual production or import volume in such region in excess of 85,000,000 pounds until all the seats are filled. If for any such 50,000,000 pound increment, more regions are eligible for seats than there are seats available, the seat or seats assigned for such increment shall be assigned to that region or those regions with greater annual average production or import volume than the other regions otherwise eligible at that increment level.

(f) In determining the volume of mushrooms produced in the United States or imported into the United States for purposes of this section, the Council and the Secretary shall:

(1) only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in §§ 1209.8 and 1209.14; and

(2) use the information received by the Council under § 1209.60, and data published by the Department.

(g) For purposes of the provisions of this section relating to the appointment of producers and importers to serve on the Council, the term *producer* or *importer* refers to any individual who is a producer or importer, respectively, or if the producer or importer is an entity other than an individual, an individual who is an officer or employee of such producer or importer.

§ 1209.31 Nominations.

All nominations for appointments to the Council under § 1209.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective by the Secretary, nominations for appointment to the initial Council shall be obtained from producers by the Secretary. In any subsequent year in which an appointment to the Council is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriated, importers, and certified by the Council and submitted to the Secretary by August 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made at regional caucuses of producers or importers, or by mail ballot as provided in paragraph (e), in accordance with procedures prescribed in this section.

(c) Except for initial Council members, whose nomination process will be initiated by the Secretary, the Council shall issue a call for nominations by February 1 of each year in which nominations for an appointment to the Council is to be made. The call shall include, at a minimum, the following information:

(1) A list by region of the vacancies for which nominees may be submitted and qualifications as to producers and importers.

(2) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3) A list of those States, by region, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Council, and national and State producer or importer associations, if known, and of the regional caucuses, if any.

(d)(1) Except as provided in paragraph (e), nominations for each position shall be made by regional caucus in the region entitled to nominate for such position. Notice of such caucus shall be publicized to all producers or importers within the region, and to the Secretary, at least 30 days prior to the caucus. The notice shall have attached to it the call for nominations from the Council and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Council, the responsibility for convening and publicizing the regional caucus shall be that of the Council.

(2) All producers or importers within the region may participate in the caucus. However, if a producer is engaged in the production of mushrooms in more than one region or is also an importer, such person's participation within a region shall be limited to one vote and shall only reflect the volume of such person's production or imports within the applicable region.

(3) The regional caucus shall conduct the selection process for the nominees in accordance with procedures to be adopted at the caucus subject to the following requirements:

(i) There shall be two individuals nominated for each open position.

(ii) Each nominee shall meet the qualifications set forth in the call.

(iii) If a producer nominee is engaged in the production of mushrooms in more than one region or is also an importer, such individual shall participate within the region that such individual so elects in writing to the Council and such election shall remain controlling until revoked in writing to the Council.

(e) After the regional caucuses for the initial Council, the Council may conduct the selection of nominees by mail ballot in lieu of a regional caucus.

(f) When producers or importers are voting for nominees to the Council, whether through a regional caucus or a mail ballot, the following conditions shall apply:

(1) Voting for any open position shall be on the basis of:

(i) One vote per eligible voter; and

(ii) Volume of average annual production or imports of the eligible voter within that region.

(2) Whenever the producers or importers in a region are choosing nominees for one open position on the Council, the proposed nominee with a majority of votes cast and the proposed nominee with a majority of the volume of production or imports voted shall be the nominees submitted to the Secretary. If a proposed nominee receives both a majority of votes cast and a majority of the volume of production or imports voted, then the proposed nominee with the second highest number of votes cast shall be a nominee submitted to the Secretary along with such proposed nominee receiving both a majority of votes cast and a majority of the volume of production or imports voted.

(3) Whenever the producers or importers in a region are choosing nominees for more than one open position on the Council at the same time, the number of the nominations submitted to the Secretary shall equal twice the number of such open positions, and for each open position shall consist of the proposed nominee with a majority number of votes cast and the proposed nominee with a majority of the volume of production or imports voted with respect to that position, subject to the rule set out in paragraph (f)(2). An individual shall only be nominated for one such open position.

(4) Voters shall certify on their ballots as to their average annual production or import volume within the region involved. Such certification may be subject to verification.

(g)(1) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members of the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(2) Whenever producers or importers in a region cannot agree on nominees for an open position on the council under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Council, the Secretary may appoint members in such manner as the Secretary, by regulation, determines appropriate.

§ 1209.32 Acceptance.

Each individual nominated for membership on the Council shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1209.33 Appointment.

From the nominations made pursuant to § 1209.31, the Secretary shall appoint the members of the Council on the basis of representation provided for in § 1209.30, except that no more than one member may be appointed to the initial Council from nominations submitted by any one producer or importer. In any subsequent year in which an appointment to the council is to be made, no member shall be appointed to the Council from nominations submitted when such nominee is employed by any one producer or importer if a current member of the Council is also employed by the producer or importer.

§ 1209.34 Term of office.

(a) The members of the Council shall serve for terms of three years, except that the members appointed to the initial Council shall serve, proportionately, for terms of one, two, and three years.

(b) Members of the initial Council shall be designated for, and shall serve, terms as follows: one producer member each from regions 1, 2 and 3 shall be appointed for an initial term of one year; one producer member each from regions 1, 2, and 3 shall be appointed for an initial term of two years; and one producer member each from regions 2, 3, and 4 shall be appointed for an initial term of three years. Because current imports of fresh mushrooms are less than 35,000,000 pounds, the minimum established for representation on the Council, importers will not initially have a member appointed to the Council.

(c)(1) Except with respect to terms of office of the initial Council, the term of office for each member of the Council shall begin on January 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Council shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following January 1, or other date that is the generally applicable beginning date for terms under paragraph (c)(1) approved by the Secretary, shall not count toward the initial term of office.

(d) Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(e)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (e)(2)(ii).

(2)(i) Those members serving initial terms of two or three years may serve one successive three-year term.

(ii) Those members serving initial terms of one year may serve two successive three-year terms.

§ 1209.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Council, the Secretary may appoint a successor from the most recent nominations submitted for open positions on the Council assigned to the region that the vacant position represents, or the Secretary may obtain nominees to fill such vacancy in such manner as the Secretary, by regulation, deems appropriate. Each such successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Council, except as provided in paragraph (b)(2)(ii).

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without

recommendation of the Council, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1209.36 Procedure.

(a) At a properly convened meeting of the Council, a majority of the members shall constitute a quorum.

(b) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Council, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, or any other such means of communication, but any such action shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(d) Meetings of the Council may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(e) The organization of the Council and the procedures for conducting meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

§ 1209.37 Compensation and reimbursement.

The members of the Council shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a reasonable per diem allowance, as approved by the Council and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

§ 1209.38 Powers.

The Council shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of mushrooms, as well as proposed programs, plans, or projects for research, consumer information, or industry information, and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of each;

(d) To recommend to the Secretary rules and regulations to effectuate the terms and provisions of this subpart;

(e) To receive, investigate, and report to the Secretary for action complaints of violations of the provisions of this subpart;

(f) To disseminate information to producers, importers, first handlers, or industry organizations through programs or by direct contact using the public postal system or other systems;

(g) To select committees and subcommittees of Council members, including an executive committee whose powers and membership shall be determined by the Council, subject to the approval of the Secretary, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(h) To establish committees which may include individuals other than Council members, and pay the necessary and reasonable expenses and fees of the members of such committees;

(i) To recommend to the Secretary amendments to this subpart;

(j) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State mushroom producer organizations, or other organizations or entities, for the development and conduct of programs, plans, or projects authorized under § 1209.40 and with such producer organizations for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Council shall not contract with any producer or importer for the purpose of mushroom promotion or research. The Council may lease physical facilities from a producer or importer for such promotion or research, if such an arrangement is determined to be cost effective by the Council and approved by the Secretary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Council may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a program, plan, or project, funds collected through assessments provided for in § 1209.51, and any other funds received by the Council in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(l) Such other powers as may be approved by the Secretary; and

(m) To develop and propose to the Secretary voluntary quality and grade standards for mushrooms, if the Council determines that such quality and grade standards would benefit the promotion of mushrooms.

§ 1209.39 Duties.

The Council shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans, or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 2109.50.

(d) To maintain such books and records, which shall be available to the

Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books, and records that clearly reflect all the acts and transactions of the Council. Minutes of each Council meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any producer or importer;

(k) To follow the Department's equal opportunity/civil rights policies; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace, maintain and expand existing markets and uses for mushrooms, develop new markets and uses for mushrooms, and to carry out programs, plans, and projects designed to provide maximum benefits to the mushroom industry.

Promotion, Research, Consumer Information, and Industry Information

§ 1209.40 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to mushrooms; and

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and use of mushrooms and mushroom products, and the creation of new products thereof, to the end that marketing and use of mushrooms may be encouraged, expanded, improved or made more acceptable. However, as prescribed by the Act, nothing in this subpart may be construed to authorize mandatory requirements for quality control, grade standards, supply management programs, or other programs that would control production or otherwise limit the right of individual producers to produce mushrooms.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Council shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any mushrooms or mushroom product shall be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

Expenses and Assessments

§ 1209.50 Budget and expenses.

(a)(1) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(i) A statement of objectives and strategy for each program, plan, or project;

(ii) A summary of anticipated revenue, with comparative data for at least one preceding year;

(iii) A summary of proposed expenditures for each program, plan, or project; and

(iv) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

Each budget shall include a rate of assessment for such fiscal year calculated, subject to § 1209.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (e). The Council may change such rate at any time, as provided in § 1209.51(b)(5).

(2)(i) Subject to paragraph (a)(2)(ii), any amendment or addition to an approved budget must be approved by the Secretary, including shifting of funds from one program, plan, or project to another.

(ii) Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(b) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(c) The Council shall not use funds collected or received under this subpart to reimburse, defray, or make payment of expenditures incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing this subpart. Such prohibition includes reimbursement, defrayment, or payment to mushroom industry associations or organizations, producers or importers, lawyers, law firms, or consultants.

(d) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use. The donor may recommend that the whole or a portion of the contribution be applied to an ongoing program, plan, or project.

(e) The Council shall reimburse the Secretary, from funds received by the Council, for administrative costs incurred by the Secretary in implementing and administering this subpart, except for the salaries of Department employees incurred in conducting referenda.

(f) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in the

reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(g) With the approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1209.51 Assessments.

(a) Any first handler initially purchasing, or otherwise placing into the current of commerce, mushrooms produced in the United States shall, in the manner as prescribed by the Council and approved by the Secretary, collect an assessment based upon the number of pounds of mushrooms marketed in the United States for the account of the producer, and remit the assessment to the Council.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment during the first year this subpart is in effect shall not exceed one-quarter of one cent per pound of mushrooms marketed, or the equivalent thereof.

(2) The rate of assessment during the second year this subpart is in effect shall not exceed one-third of one cent per pound of mushrooms marketed, or the equivalent thereof.

(3) The rate of assessment during the third year this subpart is in effect shall not exceed one-half of one cent per pound of mushrooms marketed, or the equivalent thereof.

(4) The rate of assessment during each of the fourth and following years this subpart is in effect shall not exceed one cent per pound of mushrooms marketed, or the equivalent thereof.

(5) The Council may change the rate of assessment for a fiscal year at any time with the approval of the Secretary as necessary to reflect changed circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraphs (b) (1), (2), (3), or (4), whichever is applicable.

(c) Any person marketing mushrooms of that person's own production to consumers in the United States, either directly or through retail or wholesale outlets, shall be considered a first handler and shall remit to the Council an assessment on such mushrooms at the rate per-pound then in effect, and in such form and manner prescribed by the Council.

(d) Only one assessment shall be paid on each unit of mushrooms marketed.

(e)(1) Each importer of mushrooms shall pay an assessment to the Council on mushrooms imported for marketing in the United States, through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(2) The per-pound assessment rate for imported mushrooms shall be the same as the rate provided for mushrooms produced in the United States.

(3) The import assessment shall be uniformly applied to all imported mushrooms that are identified by the number, 0709.51.0000, in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh mushrooms.

(4) The assessment due on imported mushrooms shall be paid when the mushrooms are entered or withdrawn for consumption in the United States, or at such other time as may be established by rules and regulations prescribed by the Council and approved by the Secretary and under such procedures as are provided in such rules and regulations.

(5) Only one assessment shall be paid on each unit of mushrooms imported.

(f) The collection of assessments under this section shall commence on all mushrooms marketed or imported in the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments until the Council is constituted, then remit such assessments to the Council.

(g)(1) Each person responible for remitting assessments under paragraphs (a), (c), or (e) shall remit the amounts due from assessments to the Council on a monthly basis no later than the fifteenth day of the month following the month in which the mushrooms were marketed, in such manner as prescribed by the Council.

(2)(i) A late payment charge shall be imposed on any person that fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) An additional charge shall be imposed on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary

(3) Any assessment that is determined to be owing at a date later than the payment due date established under this section, due to a person's failure to submit a report to the Council by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (g)(2)(i) and (g)(2)(ii) of this section shall be applicable.

(h) The Council, with the approval of the Secretary, may enter into agreements authorizing other organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Council for collection purposes. Any reimbursement by the Council for such services shall be based on reasonable charges for services rendered.

(i) The Council is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Council shall not be obligated to pay interest on any advance payment.

§ 1209.52 Exemption from assessment.

(a) Persons that produce or import less than 500,000 pounds of mushrooms annually shall be exempt from the assessment.

(b) To claim such exemption, such persons shall annually submit an application to the Council, on a form provided by the Council, stating that the person's production or importation of mushrooms shall not exceed 500,000 pounds for the year for which the exemption is claimed.

(c) Mushrooms produced in the United States that are exported are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(d) Imported mushrooms used for processing are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(e) Should an exempted person's production or volume of imports exceed 500,000 pounds of mushrooms during any year in which exemption is granted, such person shall be responsible for the payment of assessments on all mushrooms produced or imported during such year.

§ 1209.53 Influencing governmental action.

No funds received by the Council under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart, and to submit to the Secretary proposed voluntary grade and quality standards for mushrooms.

Reports, Books and Records

§ 1209.60 Reports.

(a) Each producer marketing mushrooms of that person's own production directly to consumers, and each first handler responsible for the collection of assessments under § 1209.51(a) shall be required to report monthly to the Council, on a form provided by the Council, such information as may be required under this subpart or any rules and regulations issued thereunder. Such information shall include, but not be limited to, the following:

(1) The first handler's name, address, and telephone number;

(2) Date of report, which is also the date of payment to the Council;

(3) Period covered by the report;

(4) The number of pounds of mushrooms purchased, initially transferred, or that in any other manner are subject to the collection of assessments, and a copy of a certificate of exemption, claiming exemption under § 1209.52 from those who claim such exemptions;

(5) The amount of assessments remitted; and

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of mushrooms determined under paragraph (a)(4) multiplied by the applicable assessment rate.

(b) If determined necessary by the Council and approved by the Secretary, each importer shall file with the Council periodic reports, on a form provided by the Council, containing at least the following information:

(1) The importer's name, address, and telephone number;

(2) The quantity of mushrooms entered or withdrawn for consumption in the United States during the period covered by the report; and

(3) The amount of assessments paid to the U.S. Customs Service at the time of such entry or withdrawal.

(c) The words final report shall be shown on the last report at the end of each fiscal year.

§ 1209.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Council or the Secretary such books and records as are deemed necessary by the Council, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1209.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the rules and regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of the Department, and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information, and shall not be available to Council members or any other producers or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1209.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1209.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b)(1) Five years after the date on which this subpart becomes effective, the Secretary shall conduct a referendum among producers and importers to determine whether they favor continuation, termination, or suspension of this subpart.

(2) Effective beginning three years after the date on which this subpart becomes effective, the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to determine whether producers and importers favor termination or suspension of this subpart.

(3) Whenever the Secretary determines that suspension or termination of this subpart is favored by a majority of the mushroom producers and importers voting in a referendum under paragraphs (b)(1) or (2) who, during a representative period determined by the Secretary, have been engaged in producing and importing mushrooms and who, on average, annually produced and imported more than 50 percent of the volume of mushrooms produced and imported by all those producers and importers voting in the referendum, the Secretary shall:

(i) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(ii) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(4) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1209.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Council, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1209.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1209.74 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1209.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Council under this subpart shall be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Council and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council. Upon termination of this subpart, § 1209.72 shall apply to determine disposition of all such property.

§ 1209.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1209.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Dated: December 11, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92-921 Filed 1-14-92; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1944

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Housing Preservation Grant Regulations. The intended effect is to provide repair and rehabilitation assistance to owner(s) of single or multi-unit rental properties and cooperative housing projects. These revisions will bring the regulations into conformance with existing requirements to authorizing legislation for the Housing Preservation Grant program, section 533 of the Housing Act of 1949, 42 U.S.C. 1490m.

DATES: Comments must be received on or before March 16, 1992.

ADDRESSES: Submit written comments in duplicate to the office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, room 6348, South Agriculture Building, Washington, DC 20250. All comments made pursuant to this notice will be available for public inspection at the above address. The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 12 hours per response, with an average of 1.35 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Pentecost, Branch Chief, Special Authorities Branch, Multiple Housing Processing Division, FmHA, USDA, Washington, DC 20250, Telephone (202) 382-1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions, or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this

action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

Programs Affected

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.433, Housing Preservation Grant.

Intergovernmental Consultation

This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

Regulatory Flexibility Act

The Administrator has determined that the proposed action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements. The proposed action will only affect a small number of rural communities.

General Information

This proposed rule incorporates the provisions of section 533 of the Housing Act of 1949, 42 U.S.C. 1490m, allowing for Housing Preservation Grant assistance to repair and rehabilitate single and mult-unit rental properties and cooperative housing units, in addition to existing single family housing units.

Significant Changes

In addition to making a major change of expanding the program to include single and multi-unit rental properties and co-ops, FmHA is making the following major changes and seeks comment on same. The addition of § 1944.654 covering Debarment and Suspension regulations, as well as the applicable requirements on the Drug Free Workplace Act.

The addition of the following definitions in § 1944.656: Cooperative (Co-op); Household; Overcrowding; Rental Properties; and Tenant.

A section on applicant eligibility (§ 1944.658(e)) stating that nonprofit entities, where a proposal exists solely on an identity of interest, is not eligible.

Removing references to the program being operated out of the State Office at the discretion of the State Director.

Re-defining income of recipients to include all income from persons residing in the household.

Adding § 1944.662 to define the eligibility of HPG assistance on rental properties or co-ops and § 1944.663 on the ownership agreement requirements between the HPG Grantee and the rental property owner or co-op.

Reducing in § 1944.664(e) the amount of HPG funds to be used for cosmetic purposes from twenty-five percent to twenty percent.

Adding § 1944.667 to define relocation and displacement requirements.

Expanding § 1944.671 to include the Fair Housing Act requirements and define outreach efforts.

Under § 1944.679, Project Selection Criteria, the following changes:

(a) (1) in defining financially feasible;

(b) (4) in changing the awarding of 5 points to an application where the percent of HPG funds used for administration purposes is less than twenty percent to a sliding scale;

(7) in adding the awarding of points for a HPG program involving rental properties or co-ops;

(c) Adding language to eliminate (hopefully) a "lottery" system in case of a tie; and in eliminating the awarding of ten points (also previously referenced in § 1944.686) to existing grantees.

And finally, adding § 1944.689 which covers long-term monitoring requirements by the grantee.

List of Subjects for 7 CFR Part 1944

Grant programs—Housing and community development, Handicapped, Loan programs—Housing and community development, Nonprofit organizations, Rural housing.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart N—Housing Preservation Grants

2. Section 1944.651 is revised to read as follows:

§ 1944.651 General.

(a) This subpart sets forth the policies and procedures for making grants under section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m), to provide funds to eligible applicants (hereafter also referred to as "grantee(s)") to conduct housing preservation programs benefiting very low- and low-income rural residents. Program funds cover part or all of the grantee's cost of providing loans, grants, interest reduction payments or other assistance to eligible homeowners, owners of single or multiple unit rental properties or for the benefit of owners (as occupants) of consumer cooperative housing projects (hereafter also referred to as co-ops). Such assistance will be used to reduce the cost of repair and rehabilitation, to remove or correct health or safety hazards, to comply with applicable development standards or codes, or to make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons.

(b) The Farmers Home Administration (FmHA) will provide Housing Preservation Grant (HPG) assistance to grantees who are responsible for providing assistance to eligible persons without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such person has capacity to contract.

(c) The preapplication must only address a proposal to finance repairs and rehabilitation activities to individual housing or rental properties or co-ops. Any combination proposal will not be accepted.

3. Section 1944.652 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1944.652 Policy.

(a) The policy of FmHA is to provide housing preservation grants to grantees to operate a program which finances repair and rehabilitation activities to individual housing, rental properties, or co-ops for very low- and low-income persons. Grantees are expected to:

(1) Coordinate and leverage funding for repair and rehabilitation activities with housing and community development organizations and/or activities operating in the same geographic area; and (2) focus the program to rural areas and smaller communities so that it serves very low- and low-income persons.

(b) FmHA intends to permit grantees considerable latitude in program design and administration. The forms or types of assistance must provide the greatest long term benefit to the greatest number of persons residing in individual housing, rental properties, or co-ops needing repair and rehabilitation.

* * * * *

4. Section 1944.653 is revised to read as follows:

§ 1944.653 Objective.

The objective of the HPG program is to repair or rehabilitate individual housing, rental properties, or co-ops owned and/or occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners, owners of rental properties, and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation.

5. Section 1944.654 is added to read as follows:

§ 1944.654 Debarment and suspension—drug-free workplace.

(a) For purposes of this subpart, Exhibit A of subpart M of part 1940 (available in any FmHA office) requires all FmHA applicants for a HPG to sign and submit with their preapplication, Form AD 1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions," which basically states that the applicant has not been debarred or suspended from Government assistance. Further, all grantees after receiving a HPG must obtain a signed certification (Form AD 1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions") from all persons or entities (excluding homeowner recipients) that the grantee does business with as a result of the HPG. Grantees are responsible for informing these persons or entities of the provisions of Exhibit A of subpart M of part 1940 and of maintaining Form AD 1048 in the grantee's office.

(b) Grantees must also be made aware of the Drug-free Workplace Act of 1988 requirements found in Exhibit A of subpart M of part 1940. For this subpart, a grantee is defined as any organization who applies for or receives a direct grant from FmHA. All preapplications must include a signed Form AD 1049, "Certification Regarding Drug-free Workplace Requirements (Grants) Alternative I—Grantees Other Than Individuals."

6. Section 1944.655 is added to read as follows:

§ 1944.655 Applicant accountability requirements.

Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA grant as described in subpart S of part 1940 of this chapter.

7. Section 1944.656 is revised to read as follows:

§ 1944.656 Definitions.

Reference to this subpart to District, State, National and Finance Offices, and to District Director, State Director, and Administrator refer to FmHA offices and officials and should be read as prefaced by FmHA. Terms used in this subpart have the following meanings:

Adjusted annual income. As defined under § 1944.2(k) of subpart A of part 1944 of this chapter.

Applicant or grantee Any eligible organization which applies for or receives HPG funds under a grant agreement.

Cooperative (Co-op). For the purposes of the HPG program, a cooperative (co-op) is one which:

(1) Is a corporation organized as a consumer cooperative; (2) will operate the housing on a nonprofit basis solely for the benefit of the occupants; and (3) is legally precluded from distributing, for a minimum period of five years from the date of HPG assistance from the grantee, any gains or profits from operation of the co-op. For this purpose, any patronage refunds to occupants of the co-op would not be considered gains or profits. A co-op may accept non-members as well as members for occupancy in the project.

Grant agreement. The contract between FmHA and the grantee which sets forth the terms and conditions under which HPG funds will be made available. (See Exhibit A of this subpart.)

Homeowner. For the purposes of the HPG program, a homeowner is one who can meet the conditions of income and ownership under § 1944.661 of this subpart.

Household. For the purposes of the HPG program, a household is defined as all persons living in a unit or dwelling all or part of the next 12 months assisted with HPG funds.

Housing preservation. The repair and rehabilitation activities that contribute to the health, safety and well-being of the occupant, and contribute to the structural integrity or long-term preservation of the unit. As a result of these activities, the overall condition of the unit or dwelling must be raised to meet FmHA Thermal Standards for existing structures and applicable development standards for existing housing recognized by FmHA in subpart A of part 1924 of this chapter or standards contained in any of the voluntary national model codes acceptable upon review by FmHA. Properties included on or eligible for inclusion on the National Register of Historic Places are subject to the standards and conditions of § 1944.673 of this subpart.

Low-income. An adjusted annual income that does not exceed the "lower" income limit according to size of household as established by the United States Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is located. Maximum low-income limits are set forth in Exhibit C of subpart A of this part (available in any FmHA office).

Organization. An organization is defined as one of the following:

(1) A State, commonwealth, trust territory, other political subdivision, or public nonprofit corporation authorized to receive and administer HPG funds;

(2) An Indian tribe, band, group, nation, including Alaskan Indians, Aleuts, Eskimos and any Alaskan Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512);

(3) A private nonprofit corporation that is owned and controlled by private persons or interests for purposes other than making gains or profits for the corporation, is legally precluded from distributing any gains or profits to its members, and is authorized to undertake housing development activities; or

(4) A consortium of units of government and/or private nonprofit organizations which is otherwise eligible to receive and administer HPG funds and which meets the following conditions:

(i) Be comprised of units of government and/or private nonprofit corporations that are close together, located in the same state, and serve areas eligible for FmHA housing assistance; and

(ii) Have executed an agreement among its members designating one participating unit of government or private nonprofit corporation as the applicant or designating a legal entity (such as a Council of Governments) to be the applicant.

Overcrowding. Overcrowding is defined as having more than the ideal number of persons residing in a unit, as indicated in the following table:

Number of bedrooms	Ideal number of persons
0	2
1	2
2	4
3	6

Number of bedrooms	Ideal number of persons
4	8
5	10

Rental properties. Rental properties are defined as single-unit or multi-unit dwellings used for occupancy by tenants.

Rural area. The definition is § 1944.10 of subpart A of part 1944 of this chapter applies.

Tenant. Any person who resides in a single or multi-unit rental property and is not an owner of that rental property.

Very low-income. An adjusted annual income that does not exceed the very low-income limit according to size of household as established by HUD for the county or MSA where the property is located. Maximum very low-income limits are set forth in Exhibit C of subpart A of this part (available in any FmHA Office).

8. Section 1944.658 is amended by revising paragraphs (a), (c), and (d); and by adding paragraph (e) to read as follows:

§ 1944.658 Applicant eligibility.

* * * * *

(a) Be an organization as defined in § 1944.656 (i) of this subpart;

* * * * *

(c) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of this regulation, the grant agreement, and 7 CFR parts 3015 or 3016 (available in any FmHA office), as appropriate, and comply with the grant agreement and FmHA regulations;

(d) If the applicant is engaged in or plans to become engage in any other activities, they must provide sufficient evidence and documentation that they have adequate resources, including financial resources, to carry on any other programs or activities to which they are committed without jeopardizing the success and effectiveness of the HPG project; and

(e) Applicants will not be considered eligible if the applicant is:

(1) A non-profit entity and there exists an identity of interest, as defined in § 1924.4(i) of subpart A of part 1924, between the applicant and the owner(s) of the proposed dwelling or co-op to be rehabilitated or repaired; or

(2) if the applicants' proposal is based solely on an identity of interest program.

9. Section 1944.660 is revised to read as follows:

§ 1944.660 Authorized representative of the HPG applicant and FmHA point of contact.

(a) FmHA will deal only with authorized representatives designated by the HPG applicant.

(b) FmHA has designated the District Office as the point of initial contact for all matters relating to the HPG program and as the office generally responsible for the administration of HPG projects. Exhibit C (available in any FmHA office), provides guidance to FmHA staff on the HPG program.

10. Section 1944.661 is revised to read as follows:

§ 1944.661 Individual Homeowners—eligibility for HPG assistance.

The individual homeowners assisted must have income that meets the low- or very low-income definition, be the owner of an individual dwelling at least one year prior to the time of assistance, and be the intended occupant of the dwelling subsequent to the time of assistance. The dwelling must be located in a rural area and be in need of housing preservation assistance. Each homeowner is required to submit evidence of income and ownership for retention in the grantee's files.

(a) *Income.* Determination of income will be made in accordance with § 1944.8 of subpart A of this part. All members of the household, as defined in § 1944.656 (f) of this subpart, must be included when determining income. Grantees must use certifications, may require additional information from the homeowner, and should seek advice from their attorney.

(b) *Ownership.* Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Methods for assuring the intention of the homeowner to continue to occupy the unit after assistance will be established by the grantee. Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired or rehabilitated when not all of the owners are occupying the property. HPG assistance may be made in such cases when:

(i) The occupant has been living in the house for at least one year prior to the date of requesting assistance;

(ii) The grantee has no reason to believe the occupant's position of owner/occupant will be jeopardized as a result of the improvements to be made with HPG funds; and

(iii) In the case of a loan, and to the extent possible, the co-owner(s) should also sign the security instrument.

(3) A leasehold interest in the property to be repaired. When the potential HPG recipient's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than five years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) A life estate, with the right of present possession, control, and beneficial use of the property.

(5) Land assignments may be accepted as evidence of ownership only for Indians living on a reservation, when historically the permits have been used by the Tribe and have had the comparable effect of a life estate.

(c) *Other evidence of ownership.* The following items may be accepted as evidence of ownership if a recorded deed cannot be provided:

(1) Any legal instrument, whether or not recorded, which is commonly considered evidence of ownership.

(2) Evidence that the person(s) receiving assistance from the HPG grantee is listed as the owner of the property by the local taxing authority and is responsible for any real estate taxes.

(3) Affidavits by others in the community that the person(s) receiving assistance from the HPG grantee has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

11. Sections 1944.663 and 1944.669 are added to read as follows:

§ 1944.663 Eligibility of HPG assistance on rental properties or co-ops.

(a) *Ownership.* The owner(s) of rental properties or co-ops must own the dwelling at the time of receiving assistance from the HPG grantee. The dwelling must be located in a rural area and be in need of housing preservation assistance. Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Owners of rental properties and co-ops are required to submit evidence of ownership for retention in the grantee's files. Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired or rehabilitated.

(3) A leasehold interest in the property to be repaired or rehabilitated. Ownership interest in the property is based on a leasehold interest. The lease

must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than five years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) Land assignments may be accepted as evidence of ownership only for Indians living on a reservation, when historically the permits have been used by the Tribe and have had the comparable effect of a life estate.

(b) *Tenant eligibility.* The following requirements must be met in order for a unit within a rental property or co-op to be assisted with HPG funds:

(1) The tenant must have income that meets the very-low or low-income definition.

(2) The tenant must be the intended occupant of the unit, but is not required to have resided previously in the dwelling.

(3) Any owner(s) who receives assistance from a HPG grantee or a member of the immediate family of the owner(s), who also resides in a unit within the dwelling to be repaired or rehabilitated is not eligible to have their unit repaired or rehabilitated.

(c) *Identity of interest.* When an identity of interest, as defined in § 1924.4(i) of subpart A of part 1924, exists between a non-profit entity and the owner(s) of a dwelling, the property is not eligible for assistance.

§ 1944.669 Ownership agreement between HPG grantee and rental property owner or co-op.

HPG assistance may be provided by a grantee with respect to rental properties or co-ops only if the following conditions are met by the owner(s) or by the co-op during a five year period beginning on the date on which the units in the dwelling are available for occupancy. The HPG grantee is responsible for preparing, executing, and monitoring for compliance, the ownership agreement with the owner(s) of the rental property, or with the co-op. The rental property owner(s) or the co-ops are required to enter into an ownership agreement with the grantee to assure compliance with the requirements of this section.

(a) *Ownership Agreement.* At a minimum, the owership agreement must include the following clauses:

(1) The owner(s) agrees to pass on to the tenants any reduction in the debt service payments resulting from the HPG assistance provided by the HPG grantee to the owner(s)

(2) The owner(s) of rental properties agrees not to convert the units to condominium ownership. In the case of co-ops, the owner(s) agrees not to convert the dwelling(s) to condominum ownership or any form of cooperative ownership not eligible under this section.

(3) The owner(s) agrees not to refuse to rent a unit to any person solely because the person is receiving or is eligible to receive assistance under any Federal, State, or local housing assistance program.

(4) The owner(s) agrees that the units repaired or rehabilitated will be occupied or available for occupancy by persons of very-low or low-income.

(5) The owner(s) agrees to enter into and abide by written leases with the tenants and that such leases shall provide that the tenants may be evicted only for good cause.

(6) The owner(s) agrees that, in the event the owner(s) or the owner's successors in interest fail to carry out the requirements of this section during the applicable period, they shall make a payment to FmHA in an amount that equals the total amount of assistance provided by the grantee plus interest thereon (without compounding) for each year and any fraction thereof that the assistance was outstanding. The interest rate shall be that as determined by FmHA at the time of infraction taking into account the average yield on outstanding marketable long-term obligation of the United States during the month preceding the date on which the assistance was initially made available.

(7) The owner(s) agrees that, notwithstanding any other provisions of law, the HPG assistance provided to the owner(s) shall constitute a debt which is payable in the case of any failure of this section and shall be secured by a security instrument provided by the owner(s) or co-op to the grantee, that provides for FmHA to take such action upon incapacity or dissolution of the grantee.

(8) The owner(s) agrees and certifies that the assistance is being made available in conformity with Public Law 88–352, the "Civil Rights Act of 1964," and Public Law 90–284, the "Civil Rights Act of 1968".

(b) *Responsibilities of the grantee.* The grantee is responsible for insuring through verification and monitoring that the areas listed below are in compliance:

(1) That HPG funds used for loans, grants, or interest reduction payments providing repair or rehabilitation assistance to owners of rental properties or co-ops are not in excess of seventy-five percent (75%) of the total cost of all repairs and rehabilitation activities eligible for HPG assistance.

(2) That the owner(s) is not repairing and/or rehabilitating any unit unless it meets the requirments of § 1944.662(b) of this subpart.

(3) That rental property units occupied by owners or members of the owner's immediate family are not being repaired and or rehabilitated.

(4) That, for multi-units not considered eligible as a result of paragraph (b)(2) or (b)(3) of this section, the grantee and owner(s) shall agree on a method, if any is needed, of determining the prorata share of repairs and rehabilitation activities to the dwelling, based on a percentage of the ineligible units to the total dwelling.

12. Section 1944.664 is amended by redesignating paragraphs (b) through (f) as paragraphs (c) through (g), by adding a new paragraph (b), and by revising paragraph (a), newly designated paragraphs (c)(8), (c)(10) and (c)(11), the introductory text of newly designated paragraph (e), and newly designated paragraphs (f)(3), and (g)(2), to read as follows:

§ 1944.664 Housing preservation assistance.

(a) Grantees are responsible for providing loans, grants or other comparable assistance to homeowners, owners of rental properties, or co-ops for housing preservation as described in § 1944.656(g) of this subpart.

(b) HPG funds used for loans, grants, or interest reduction payments to provide rental repair and/or rehabilitation assistance to owners of rental properties or co-ops shall not exceed the requirements noted in § 1944.663(b)(1) of this subpart.

(c) * * *

(8) Alterations of the unit's interior or exterior to provide greater accessibility for any handicapped person;

* * * * *

(10) Necessary repairs to manufactured housing provided:

(i) For homeowners only, the recipient owns the home and the site on which the home is situated and the homeowner has occupied that home on that site for at least one year prior to receiving HPG assistance; and

(ii) For homeowners, owners of single or multiple unit rental properties, and co-ops, the manufactured housing is on a permanent foundation or will be put on a permanent foundation with HPG funds. Advice on the requirements for a permanent foundation is available from FmHA. Guidance may be found in §1944.205 of subpart E of this part and in Exhibit J of subpart A of part 1924; or

(11) Additions to any dwelling (conventional or manufactured) only

when it is clearly necessary to alleviate overcrowding or to remove health hazards to the occupants.

* * * * *

(e) HPG funds may be used to make improvements that do not contribute to the health, safety and well being of the occupant or do not materially contribute to the structural integrity or long term preservation of the unit. The percentage of the funds to be used for such purposes must not exceed twenty percent (20%) of the total funding for the unit(s) and/or dwelling, and such work must be combined with improvements listed as eligible under paragraph (c) of this section. These improvements may include, but are not limited to the following:

* * * * *

(f) * * *

(3) The grantee has established or makes available a process that provides for consumer protection to the individual homeowner, owner of a rental property, or co-op assisted; and

* * * * *

(g) * * *

(2) Refinance any debt or obligation of the grantee, the individual homeowner, owners of a rental property, or co-ops other than obliations incurred for eligible items covered by this section entered into after the date of agreement with HPG grantee.

* * * * *

13. Section 1944.665 is revised to read as follows:

§ 1944.665 Supervision and inspection of rehabilitation and repair work.

Grantees are responsible for supervising all rehabilitation and repair work financed with HPG assistance. After all HPG work has been completed, a final inspection must be done by a disinterested third party, such as local building and code enforcement officials. If there are no such officials serving the area where HPG activities will be undertaken, or if the grantee would also normally make such inspections, the grantee must use qualified contract or fee inspectors.

14. Section 1944.666 is amended by revising the introductory text and paragraphs (a)(6), (b)(3), (b)(4), (b)(6), (b)(8), and (c); and by adding paragraph (b)(9) to read as follows.

§ 1944.666 Administrative activities and policies.

Grant funds are to be used primarily for housing repair and rehabilitation activities. Use of grant funds for direct and indirect administrative costs is a secondary purpose and must not exceed twenty percent (20%) of the HPG funds awarded to the grantee.

(a) * * *

(6) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific HPG grant which were anticipated in the individual HPG grant proposal and which have been approved as eligible expenses at the time of grant approval.

(b) * * *

(3) Reimbursing personnel to perform construction related to housing preservation assistance. (Non-administrative funds may be used if construction is for housing preservation assistance under the provisions of § 1944.664(f) of this subpart.)

(4) Buying property of any kind from persons receiving assistance from the grantee under the terms of the HPG Agreement.

* * * * *

(6) Paying any debts, expenses, or costs which should be the responsibility of the individual homeowner, owner, tenant or household member of a rental property, or owner (member) or non-member of a co-op receiving HPG assistance outside the costs of repair and rehabilitation.

* * * * *

(8) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs unrelated to the HPG assistance to be provided, legislative expenses, and any excess of cost from other grant agreements.

(9) Paying added salaries for employees paid by other sources, i.e., public agencies who pay employees to handle grants.

(c) Advice concerning ineligible costs may be obtained from FmHA as part of the HPG preapplication review or when a proposed cost appears ineligible.

* * * * *

15. Section 1944.667 is added to read as follows:

§ 1944.667 Relocation and displacement.

(a) *Relocation.* In accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, public bodies and agencies must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons for which assistance will be provided. HPG funds may be used to cover costs incurred in the relocation of displaced persons. Department regulations found at 7 CFR part 21 should be followed and FmHA should be consulted for further guidance. The applicant shall include in its statement of activities a statement concerning the temporary relocation of homeowners and/or tenants during the period of repairs and/or rehabilitation to the units or dwellings. Any contract or agreement between the homeowner and the grantee, as well as between the grantee and the owner(s) of rental properties and co-ops shall include a statement covering at a minimum:

(1) The period of relocation (if any); (2) the name(s) of the party (or parties) who shall bear the cost of temporarily relocating; and (3) if paragraph (2) of this section is the grantee, the maximum amount is allowed.

(b) *Displacement.* The applicant shall include in its statement of activities, a statement as to how its proposed HPG financial assistance program shall keep to a minimum the displacement or homeowners and/or tenants.

16. Section 1944.668 is revised to read as follows:

§ 1944.668 Term of grant.

HPG projects may be funded under the terms of a grant agreement for a period of up to two years commencing on the date of execution of the grant agreement by the FmHA approval official. Term of the project will be based upon HPG resources available for the proposed project and the accomplishability of the applicant's proposal within one or two years. Applicants requesting a two year term may be asked to develop a feasible one year program if sufficient funds are not available for a two year program.

17. Section 1944.670 is amended by revising paragraph (a) to read as follows:

§ 1944.670 Project income.

(a) Project income during the grant period from loans made to homeowners, owners of rental properties, and co-ops is governed by 7 CFR parts 3015 and 3016. All income during the grant period, including amounts recovered by the grantee due to breach of agreements between the grantee and the HPG recipient, must be used under (and in accordance with) the requirements of the HPG program.

* * * * *

18. Section 1944.671 is amended by revising the section heading; and by adding paragraphs (a), (b), and (c).

§ 1944.671 Equal opportunity requirements and outreach efforts.

* * * * *

(a) *Fair Housing.* The Fair Housing Act prohibits any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making loans, grants; or other-

financial assistance for a unit or dwelling, or which will be secured by a unit or dwelling, because of race, color, religion, sex, national origin, age, familial status, or handicap. Prohibited practices under this section include:

(1) Failing to provide any person in connection with a residential real estate-related transaction, information regarding the availability of loans, grants, or other financial assistance, or providing information that is inaccurate or different from that provided others; and

(2) The term residential real estate-related transaction includes the making or purchasing of loans, grants, or other financial assistance for purchasing, constructing, improving, repairing or rehabilitating a unit or dwelling.

(b) *Outreach.* In addition, the HPG grantee is required to address an outreach effort in their program. The amount of outreach should sufficiently reach the entire service area. As a measure of compliance, the percentages of the individuals served by the HPG grantee should be in proportion to the percentages of the population of the service area by race/national origin. If the percentages are not proportional, then adequate justification is to be made. Exhibit E–1 will be used to monitor these requirements. (Further explanation and guidance of Exhibit E–1 can be found in Exhibit E–2 and are available in any FmHA office.) A separate file will be maintained by the grantee that will include the following outreach activities:

(1) Community contacts to community organizations, community leaders, including minority leaders, by name, race, and date contacted;

(2) Copies of all advertising in local newspapers, and through other media. Any advertising must reach the entire service area. FmHA encourages the use of minority-owned radio stations and other types of media, if available, in the service area. The grantee's file shall also include the name of the media used, and the percentage of its' patronage by race/national origin; and

(3) Copies of any other advertising or other printed material, including the application form used. The application form shall include the nondiscrimination slogan: "This is an equal opportunity program. Discrimination is prohibited by Federal Law."

(c) *Additional requirements.* In order to meet the Fair Housing requirements and the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the HPG grantee will need to adhere to the recommendations of Exhibit H of this subpart (available in any FmHA office).

19. Section 1944.672 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), and (b); and by adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 1944.672 Environmental and administrative requirements.

* * * * *

(a) * * *

(1) The approval of an HPG grant for the repair or rehabilitation of single or multi-unit dwellings, 25 units or less, shall be a Class I action. The approval of an HPG grant for the repair or rehabilitation of multi-unit dwellings (26 units or more) shall be considered a Class II action. As part of their preapplication materials, applicants shall submit Form FmHA 1940–20, "Request for Environmental Information," for the geographical area(s) proposed to be served by the program. The applicant shall refer to Exhibit F when completing this form. Further guidance on completing this form will be available from the FmHA office servicing the program.

(2) The use of HPG funds to repair or rehabilitate specific single or multi-unit dwellings are generally exempt from an FmHA environmental review. However, if such units or dwellings are located in a floodplain or wetland or the proposed work is not concurred in by the Advisory Council on Historic Preservation under the requirements of § 1944.673 of this subpart, an FmHA environmental review is required. Applicants must include in their preapplication a process for identifying dwellings that may receive housing preservation assistance that will require an environmental assessment.

(3) If such units or dwellings are not located in a floodplain or wetland or the proposed work is concurred in by the Advisory Council on Historic Preservation under the requirements of § 1944.673 of this subpart, no environmental review is required by FmHA. The grantee only needs to indicate its review and compliance with this subpart, indicating such in each recipient's file is accordance with paragraph (a)(5) of this section.

(4) However, when such a unit or dwelling requiring an environmental assessment is proposed for HPG assistance, the grantee will immediately contact the FmHA office designated to service the HPG grant. Prior to approval of HPG assistance to the recipient by the grantee, FmHA will prepare the environmental assessment in accordance with subpart G of part 1940 of this chapter with the assistance of the grantee, as necessary. Copies will be provided to the grantee for their files. Paragraph V of Exhibit C of this subpart provides further guidance in this area.

(5) If FmHA is required to make an environmental assessment, the results of the assessment will be made part of the recipient's file. The grantee must also include in each recipient's file:

(i) Documentaton on how the process for historic preservation review under § 1944.673 of this subpart has been complied with, including all relevant reviews and correspondence; and (ii) Determination whether the unit is located in a 100-year floodplain or a wetland.

(b) The policies, guidelines and requirements of 7 CFR parts 3015 and 3016 apply to the acceptance and use of HPG funds.

20. Section 1944.673 is amended by removing paragraph (f); and by revising paragraphs (a), (b), (b)(1), (b)(2), (b)(5), (c), (d), and (e) to read as follows:

§ 1944.673 Historic preservation requirements and procedures.

(a) FmHA has entered into a Programmatic Memorandum of Agreement (PMOA) with the National Conference of State Historic Preservation Officers (SHPO) and the Advisory Council of Historic Preservation in order to implement the specific requirements regarding historic preservation contained in section 533(i) of the enabling legislation. The PMOA, with attachments, can be found in FmHA Instruction 2000–FF (available in any FmHA office).

(b) Accordingly, each applicant for a HPG grant will provide, as part of its preapplication documentation submitted to FmHA, a description of its proposed process for assisting very low- and low-income persons owning historic properties needing rehabilitation or repair. "Historic properties" are defined as properties that are included or eligible for inclusion on the National Register of Historic Place. Each HPG proposal shall:

(1) Be developed in consultation with the SHPO for the state in which the applicant proposes to undertake the HPG program;

(2) Take into account the national historic preservation objectives set forth at 16 U.S.C. 470–1 (1), (4), and (5) (Attachment 1 of the PMOA) and specifically be designed to encourage the rehabilitation of historic properties in a manner that realistically meets the needs of very low- and low-income persons while preserving the historic and architectural character of such buildings;

* * * * *

(5) Establish a system to ensure that the rehabilitation of historic properties is reasonably consistent with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (G.P.O. 1983 0-416-688 or available from any FmHA office processing an HPG preapplication), except as provided in paragraph (b)(6) of this section, and that the SHPO is afforded the opportunity to comment on each such rehabilitation; and

* * * * *

(c) For the purposes of paragraph (b)(6) of this section, the Advisory Council on Historic Preservation will consider grantees as though they were Federal agencies in the process prescribed in the Council's regulations implementing section 106 of the National Historic Preservation Act (36 CFR part 800, Protection of Historic and Cultural Properties), except that, should the Council be unable to concur in an applicant's proposal or reach agreement with the grantee on measures to avoid or mitigate effects on an historic property, the Council will notify the SHPO, the applicant or grantee and FmHA that the entity cannot be treated as though it were a Federal agency with respect to the specific property under consideration.

(d) The grantee will also notify the FmHA office servicing its program of notification from the Council immediately. Upon receipt of such notification, FmHA will assume responsibility for completing compliance with 36 CFR part 800, using the procedures for an environmental assessment contained in subpart G of part 1940 of this chapter. The grantee will assist FmHA in preparing this assessment and may be required, if further information is needed, to prepare and submit Form FmHA 1940-20 for the property, with the grantee being the "applicant." FmHA will work with the grantee to develop alternative actions as appropriate.

(e) Such assumption of responsibility by FmHA on a particular property shall not preclude the grantee from carrying out the requirements of 36 CFR part 800 on other properties as though it were a Federal agency, but no work may be commenced on any unit or dwelling in controversy until and unless so advised by FmHA.

21. Section 1944.674 is amended buy revising the section heading and by revising paragraphs (b) and (c) to read as follows:

§ 1944.674 Public participation and intergovernmental review.

* * * * *

(b) The applicant must also make its statement of activities available to the public for comment. The applicant must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of preapplications by FmHA.

(c) The HPG program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Under subpart J of part 1940 of this chapter, "Intergovernmental Review of Farmers Home Administration Programs and Activities," prospective applicants for HPG grants must submit its statement of activities to the State single point of contact prior to submitting their preapplication to FmHA. Evidence of submittal of the statement of activities to the state single point of contact is to be submitted with the preapplication. Comments and recommendations made through the intergovernmental review process are for the purpose of assuring consideration of State and local government views. The name of the state single point of contact is available from any FmHA office. This section does not apply to Indian Tribes, bands, groups, etc., as noted in § 1944.656 (i)(2) of this subpart.

22. Section 1944.675 is revised to read as follows:

§ 1944.675 Allocation of HPG funds to States and unsued HPG funds.

The allocation and distribution of HPG funds is found in § 1940.578 of subpart L of part 1940 of this chapter.

23. Section 1944.676 is amended by redesignating paragraphs (b)(1)(ix) through (b)(1)(xiv) as paragraphs (b)(1)(x) through (b)(1)(xv) paragraphs (b)(6) and (b)(7) as paragraphs (b)(7) and (b)(8) respectively; by adding new paragraphs (b)(1)(ix), (b)(1)(xvi), and (b)(6); and by revising paragraph (a), introductory text of paragraph (b)(1), paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(vi), (b)(1)(vii), and (b)(1)(viii), newly designated paragraphs (b)(1)(xi) and (b)(1)(xiii), and paragraphs (b)(3), (b)(5), (d), (e), and (f).

§ 1944.676 Preapplication procedures.

(a) All applicants will file an original and two copies of Standard Form 424.1, "Application For Federal Assistance (Non-construction)," and supporting information subsection with the appropriate FmHA office. A preapplication package, including SF 424.1, is available in any FmHA Office.

(b) * * *

(1) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(i) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a co-op assistance program;

(ii) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, identifying potential environmental effects according to § 1944.672 of this subpart, performing the necessary work, and monitoring/inspecting work performed;

(iii) The development standard(s) the applicant will use for the housing preservation work; and, if not the FmHA development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented.

* * * * *

(vi) The estimated number of very low- and low-income minority and nonminority persons the grantee will assist with HPG funds; and, if a rental property or co-op assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income;

(vii) The geographical area(s) to be served by the HPG program;

(viii) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.,

(ix) A copy of a indirect cost proposal as required in 7 CFR parts 3015 and 3016, when the applicant has another source of federal funding in additional to the FmHA HPG program;

* * * * *

(xi) The method of evaluation to be used by the applicant to determine the

effectiveness of its program which encompasses the requirements for quarterly reports to FmHA in accordance with § 1944.683(b) of this subpart and the monitoring plan for rental properties and co-ops (when applicable) according to § 1944.689 of this subpart;

* * * * *

(xiii) The use of program income, if any, and the tracking system used for monitoring same;

* * * * *

(xvi) The outreach efforts outlined in § 1944.671 (b) of this subpart.

* * * * *

(3) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; and, the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, the names, addresses, and principal purpose of the other organizations and, if a consortium, documentation showing compliance with § 1944.656 (i)(4) of this subpart.

* * * * *

(5) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts (according to paragraph (b)(1)(xi) of this section).

(6) A statement containing the component for alleviating overcrowding according to § 1944.656 (j) of this subpart.

* * * * *

(d) The applicant must submit written statements and related correspondence reflecting compliance with § 1944.674 (a) and (c) of this subpart regarding consultation with local government leaders in the preparation of its program and the consultation with local and state government pursuant to the provisions of Executive Order 12372.

(e) The applicant is to make its statement of activities available to the public for comment prior to submission to FmHA pursuant to § 1944.674 (b) of this subpart. The application must contain a description of how the comments (if any were received) were addressed.

(f) The applicant must submit an original and one copy of Form FmHA 1940–20, as well as a description of the applicant's process for determining whether a dwelling requires an environmental assessment according to § 1944.672 of this subpart.

* * *

* * * * *

24. Section 1944.678 is revised to read as follows:

§ 1944.678 Preapplication submission deadline.

Dates governing the invitation and review of HPG preapplications will be published annually in the **Federal Register** and may be obtained from FmHA State or District Offices. Preapplications received after the date specified in the **Federal Register** will not be considered for funding in that fiscal year and will be returned.

25. Section 1944.679 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1) and (a)(4), the introductory text of paragraphs (b), (b)(1), (b)(2), and (b)(3), paragraphs (b)(3)(i), (b)(3)(ii), (b)(5), and (b)(7); and by adding paragraphs (a)(5) and (c) to read as follows:

§ 1944.679 Project selection criteria.

(a) Applicants must meet all of the following threshold criteria:

(1) Provide a financially feasible program of housing preservation assistance. "Financially feasible" is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very-low and low-income persons:

* * * * *

(4) Meet the requirements of consultation and public comment in accordance with § 1944.674 of this subpart; and

(5) Submit a complete preapplication as outlined in § 1944.676 of this subpart.

(b) For applicants meeting all of the requirements listed in paragraph (a) of this section, FmHA will use the weighted criteria in this paragraph in the selection of grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest ranking applicant(s) will be selected, in accordance with § 1944.680 of this subpart and the allocation of funds available to the State. Exhibit D of this subpart will be used for the rating.

(1) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

* * * * *

(2) The applicant's proposal may be expected to result in the following percentage of HPG fund use to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds to total funds:

* * * * *

(3) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(i) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program, including FmHA's HPG program: 10 points.

(ii) The organization or a member of its staff has two or more years experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

* * * * *

(5) The program will use less than twenty percent (20%) of HPG funds for administration purposes:

(i) Twenty-one percent or more: Not eligible.
(ii) Twenty percent (20%): 0 points.
(iii) Nineteen percent (19%): 1 point.
(iv) Eighteen percent (18%): 2 points.
(v) Seventeen percent (17%): 3 points.
(vi) Sixteen percent (16%): 4 points.
(vii) Fifteen percent or less: 5 points.

* * * * *

(7) Points are awarded based on a housing preservation program involving rental units (single and multi-unit) or co-ops (this paragraph specifically excludes the awarding of points for a homeownership proposal). The dwellings will be available for occupancy for persons of very-low or low-income for a specified time period of:

(i) Six thru eight years: 5 points;
(ii) Nine thru ten years: 10 points;
(iii) Eleven or more years: 15 points.

(c) In the event more than one preapplication receives the same amount of points, those preapplications will then be ranked based on the actual percentage figure used for determining the points under paragraph (b)(1) of this section. Further, in the event that preapplications are still tied, then those preapplications still tied will be ranked based on the percentage figures used (low to high) in paragraph (b)(2) of this section. Finally, if there is still a tie, then a "lottery" system will be used.

26. Section 1944.680 is revised to read as follows:

§ 1944.680 Limitation on grantee selection.

After all preapplications have been reviewed under the selection criteria and if more than one preapplication has met the criteria of § 1944.679(a) of this subpart, the State Director or approval official may not approve more than fifty percent (50%) of the State's final allocation to a single applicant.

27. Section 1944.681 is revised to read as follows:

§ 1944.681 Application submission.

Applicants selected by FmHA will be advised to submit a full application in an original and two copies of SF 424.1, and are to include any condition or amendments that must be incorporated into the statement of activities prior to submitting a full application. Instructions on submission and timing will be provided by FmHA.

28. Section 1944.682 is amended by revising the section heading and introductory text and paragraphs (a), (c) and (d) to read as follows:

§ 1944.682 Preapplication/application review, grant approval, and requesting HPG funds.

The FmHA District Office will review the preapplications and applications submitted. Further review and actions will be taken by FmHA personnel in accordance with Exhibit C of this subpart. Exhibit G of this subpart will be used by the State Office to notify the National Office of preapplications received, eligibility, ranking, and amounts recommended. Preapplications determined not eligible and/or not meeting the selection criteria will be notified in the manner prescribed in Exhibit C of this subpart (available in any FmHA office). In addition, FmHA will document its findings and advise the applicant of its review rights or appeal rights (if applicable) under subpart B of part 1900 of this chapter. Applications determined not eligible will be handled in the same manner. The preapplications or applications determined incomplete will be notified in the manner prescribed in Exhibit C of this subpart and will not be given appeal rights. The State Director is authorized to approve a HPG in accordance with this subpart and subpart A of part 1901 of this chapter. The State Director may delegate this authority in writing to designated State Office personnel and District Directors. Further:

(a) Grant approval is the process by which FmHA determines that all applicable administrative and legal conditions for making a grant have been met, the grant agreement is signed, and funds have been obligated for the HPG project. If acceptable, the approval official will inform the applicant of approval, having the applicant sign Form FmHA 1940–1, "Request for Obligation of Funds," and Exhibit A of this subpart. The applicant will be sent a copy of the executed grant agreement and Form FmHA 1940–1. Should any conditions be attached to the grant agreement that must be satisfied prior to the applicant receiving any HPG funds, the grant agreement and the conditions will be returned to the applicant for acceptance and acknowledgement on the grant agreement prior to execution by the approval official.

* * * * *

(c) With the executed Grant Agreement and Form FmHA 1940–1, FmHA will send the approved applicant (now the "grantee") copies of SF–270. The grantee must submit an original and two copies of SF–270 to the FmHA office servicing the project. In addition, the grantee must submit SF–272, "Federal Cash Transactions Report," each time an advance of funds is made. This report shall be used by FmHA to monitor cash advances made to the grantee. Advances or reimbursements must be in accordance with the grantee's budget and statement of activities, including any amendments, prior approved by FmHA. Requests for reimbursement or advances must be at least 30 calendar days apart.

(d) If the grantee fails to submit required reports pursuant to § 1944.683 of this subpart or is in violation of the grant agreement, FmHA may suspend HPG reimbursements and advances or terminate the grant in accordance with § 1944.688 of this subpart and the grant agreement.

29. Section 1944.683 is amended by revising paragraph (a), the introductory text of paragraphs (b) and (b)(2); paragraphs (b)(2)(i), (b)(2)(ii), (b)(3)(i), (b)(3)(ii), (b)(6), (c) and (d); and by adding paragraph (b)(7) to read as follows:

§ 1944.683 Reporting requirements.

(a) SF–269, "Financial Status Report," is required of all grantees on a quarterly basis. Grantees shall submit an original and two copies of the report to the designated FmHA servicing office. When preparing the Financial Status Report, the total program outlays (Item 10, g, of SF–269) should be less any rebates, refunds, or other discounts. Reports must be submitted no later than 15 days after the end of each calendar quarter.

(b) Quarterly performance reports shall be submitted by grantees with SF–269, in an original and two copies (see Exhibit E–1 of this subpart.) The quarterly report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. As part of the grantee's preapplication submission, as reported by § 1944.676(b) of this subpart, the grantee establishes its objectives of the HPG program, including its method of evaluation to determine its effectiveness. Accordingly, the report must include, but need not be limited to, the following:

* * * * *

(2) The following specific information for each unit or dwelling assisted:

(i) Name(s), address, and income(s) of each homeowner assisted or the name and address of the owner(s) or co-op for each rental property (single or multi-unit) or co-op assisted;

(ii) Total cost of repair/rehabilitation, a list of major repairs made, amount financed by HPG, and amount financed from which other sources;

* * * * *

(3) * * *

(i) The number of very-low and low-income, minority and nonminority persons assisted in obtaining adequate housing by the HPG program through repair and rehabilitation; and (ii) The average cost of assistance provided to each household.

* * * * *

(6) Objectives established for the next reporting period, sufficiently detailed to identify the type of assistance to be provided, the number and type of households to be assisted, etc.

(7) A certification that the final building inspection reports for each rehabilitation or repair work financed with HPG funds for that quarter is on file.

(c) The grantee should be prepared to meet with the FmHA District Office servicing the project to discuss its quarterly report shortly after submission.

(d) If the reports are not submitted in a timely manner or if the reports indicate that the grantee has made unsatisfactory progress or the grantee is not meeting its established objectives, the District Director will recommend to the State Director appropriate action to resolve the indicated problem(s). If appropriate corrective action is not taken by the grantee, the State Director has the discretion to not authorize further advances by suspending the project in accordance with § 1944.688 of this subpart and the grant agreement.

30. Section 1944.684 is amended by revising paragraph (a), the introductory text of paragraphs (b) and (b)(1), and paragraphs (c) and (d) to read as follows:

§ 1944.684 Extending grant agreement and modifying the statement of activities.

(a) All requests extending the original grant agreement or modifying the HPG program's statement of activities must be in writing. Such requests will be processed through the designated FmHA office serving the project. The approval official will respond to the applicant within 30 days of receipt of the request in the District Office.

(b) A grantee may request an extension of the grant agreement prior to the end of the project term specified in the grant agreement if the grantee anticipates that there will be grant funds remaining and the grantee has demonstrated its ability to conduct its program in a manner satisfactory to FmHA. The approval official may approve an extension when:

(1) The grantee is likely to complete or exceed the goals outlined in the approved statement of activities; and

* * * * *

(c) Modifications to the statement of activities, such as revising the processes the grantee follows in operating the HPG program, may be approved by the approval official when the modifications are for eligible purposes in accordance with §§ 1944.664 and 1944.666 of this subpart, meet any applicable review and process requirements of this subpart, and the program will continue to serve the geographic area originally approved. The grantee will submit its proposed revisions together with the necessary supporting information to FmHA prior to modifying its operation from the approved statement of activities.

(d) Exhibit B of this subpart will be used for all extensions on and modifications to the grant agreement.

31. Section 1944.686 is revised to read as follows:

§ 1944.686 Additional grants.

An additional HPG grant may be made when the grantee has achieved or nearly achieved the goals established for the previous or existing grant. The grantee must file a preapplication for the current fiscal year which will be processed and compared under the project selection criteria to others submitted at that time.

32. Section 1944.688 is amended by removing paragraph (e); by redesignating paragraph (f) as (e); and by revising paragraphs (c) and (d), and newly designated paragraph (e) to read as follows:

§ 1944.688 Grant evaluation, closeout, suspension and termination.

* * * * *

(c) Grantees will have the opportunity to appeal a suspension or termination under FmHA's appeal procedures under subpart b of part 1900 of this chapter.

(d) The grantee will complete the closeout procedures as specified in the grant agreement.

(e) The grantee will have an audit performed upon termination or completion of the project in accordance with 7 CFR parts 3015 and 3016, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

33. Section 1944.689 is added to read as follows:

§ 1944.689 Long-term monitoring by grantee.

(a) The Grantee is required to perform long-term monitoring on any housing preservation program involving rental properties and co-ops. This monitoring shall be at least on an annual basis and shall consist of, at a minimum, the following:

(1) All requirements noted in § 1944.663 of this subpart;

(2) All requirements of the "ownership agreement" executed between the Grantee and the Rental Property Owner or Co-op; and

(3) All requirements noted in 7 CFR part 3015 and 3016 during the effective period of the grant agreement.

(b) The Grantee is required to make available to FmHA any such information as requested by the FmHA concerning the above. The grantee shall submit to the FmHA servicing office an annual report every year while the ownership agreement is in effect. This report shall be submitted within 15 days after the anniversary date of termination of the grant agreement. At a minimum, the report will consist of a statement that the grantee is in compliance with this subpart.

(c) All files pertaining to such rental property owner or co-op shall be kept separate and shall be maintained for a period of three years after the termination date of the ownership agreement.

34. Section 1944.690 is amended by adding the following sentence at the end of the paragraph:

§ 1944.690 Exception authority.

* * * Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

Dated: October 31, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-919 Filed 1-14-92; 8:45 am]

BILLING CODE 3410-07-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies Extension of Annual Report Filing, etc.

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule incorporates administrative experience and clarifies existing rules based on the Agency's experience since the last amendment. If adopted, this rule would: (1) Provide more flexibility in granting a 503 company a temporary expansion of its area of operations; (2) delete members from the list of parties whose names and addresses must be published as part of the certification process; (3) allow a 60 day extension on the deadline for the filing of a 503 company's annual report if they are awaiting the report of their public accountant; (4) amend the 503 Company audit requirement; (5) add a provision that interim financing cannot be derived from funds obtained through other SBA programs; (6) clarify that a small concern (or associate) is not disallowed from paying for goods or services for subsequent reimbursement from an interim lender; (7) delete a redundant requirement that the maximum private sector financing must be obtained; (8) allow SBA flexibility in cases involving 503 Company injections; (9) change the circumstances under which SBA would disburse funds to cover borrower's tax liabilities on 503 loans; and (10) delete the specific amount of the reserve deposit and the funding fee and provide for their publication in the **Federal Register** in the event they are changed.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments should be sent to LeAnn M. Oliver, Deputy Director for Program Development, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street, SW., Washington DC, 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director for Program Development, Office of Rural Affairs and Economic Development, Small Business Administration, Telephone (202) 205–6485.

SUPPLEMENTARY INFORMATION: This rule proposes changes dictated by recent administrative experiences and clarifies existing rules about which questions have arisen.

Section 108.503–1(c)(1)(iii) would be amended to allow SBA's Central Office to extend, for an additional year, a temporary expansion of a development company's service area when the area of expansion is underserved. Such expansions are currently available for up to 1 year. This issue has arisen because contractions in the number of development companies have resulted in more areas of the country having no primary coverage. This rule is proposed in order to assure that the 504 program is available to all businesses, regardless of their geographic location.

Secton 108.503–2(b) would be amended to delete the requirement that the names and addresses of members be published as part of the public notice that a development company has applied to be certified in the 503 program. Many 503 companies have extensive memberships reflecting broad support from the community. The Board of Directors is representative of the membership as a whole and each board member's name and address must be published under the existing and proposed regulations. The Agency has decided that the additional expense of publishing long lists of member names cannot be justified as it does not provide significant information to the public.

Annual report filings would be changed in two ways under this proposal: (1) Section 108.503–3 would allow a 60 day extension for the filing of a 503 company's annual report if the CDC is awaiting the report of its public accountants. (2) The proposal would also clarify the financial statements requirement to accept those prepared using Generally Accepted Accounting Principles (GAAP).

Restrictions on interim financing would be clarified and strengthened. A new § 108.503–7(b)(1) would provide that interim financing cannot be derived from funds obtained through other SBA programs. This clarifies SBA policy that the Agency not be exposed to construction financing risks. Paragraph (b)(3) would clarify that a small concern (or associate) is allowed to pay for goods or services related to a project and receive subsequent reimbursement from an interim lender. A borrower may make expenditures in the normal course of business (e.g., deposits to hold orders, etc.) that are legitimate project costs commonly reimbursed as part of the interim financing.

The regulation governing third party financing would be amended to delete the statement that the maximum private sector financing must be obtained. The statement in § 108.503–8(a)(3) would be removed to decrease the potential for misinterpretation because there are some projects where it is desirable for the small concern to make an injection that is more than the required minimum. This could result in the private sector financing being equal to the injection and SBA's portion. The change proposed here would make it clear that those situations can be accommodated.

Section 108.503–10 would give SBA the flexibility to make sensible arrangements related to 503 Company injections, repayment terms, and requirements for subordination to SBA.

The proposal would also amend the provision related to 503 borrowers' receipt of funds from their Escrow/Reserve Account to meet tax liabilities. This rule would require that borrowers request compensation within 60 days of the date they were required to file their returns. This is a clearer statement of SBA's intent. Lastly, the proposal would delete the specific percentages of the reserve deposit and the funding fee and provide for their publication in the **Federal Register** in the event they are changed. Each borrower signs individual documents that delineate these amounts and given the need to act in a timely manner when responding to changes in program costs, the Agency has determined that a more efficient method of notification of specific percentages is the publication of a notice in the **Federal Register**.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this proposal, if promulgated as final, would not constitute a major rule for the purposes of Executive Order 12291, because the annual effect of this proposed rule on the national economy would not attain $100 million. In this regard, the amendments to §§ 108.503–3, 108.503–7(b)(1), 108.503–7(b)(3), 108.503–8(a)(3), 108.503–10, 108.503–11 and 108.504(e) are policy or procedural in nature and are therefore revenue neutral. The proposed amendment to 108.503–1(c)(1)(iii) is unlikely to result in more than 10 additional loans being funded. Since the average loan size is $285,000, the maximum effect would be an additional $2.8 million in loan approvals. The proposed amendment to Section 108.503–2(b) will result in lowered publication costs for 503 company applicants. Since there are approximately 15 new applications and 24 applications for expansion of area annually, we estimate that the savings to the industry will be about $44,000 per year.

These proposed rules will not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and will not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that these proposed rules, if promulgated as final, would not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For the purpose of compliance with the Regulatory Flexibility Act, SBA certifies that these proposed rules would not, if promulgated in final form, have a significant economic impact on a substantial number of small entities for the same reasons that this rule does not constitute a major rule under Executive Order 12291 analysis above.

For purposes of the Paperwork Reduction Act, Public Law 98–115, 44 U.S.C. ch. 35, SBA certifies that these proposed rules, if promulgated as final, would impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set out in the preamble, part 108 of title 13, Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c, Pub. L. 101–515, Pub. L. 101–574.

2. Section 108.503–1 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 108.503–1 Eligibility requirements for 502 companies.

* * * * *

(c) Area of Operations. * * *

(1) * * *

(iii) With SBA prior approval of each loan, temporarily expand its area of operations to include an area underserved by the 503 program. Such temporary expansion may be granted for up to one year, provided, however, that the Director, ORA & ED may extend such expansion for a period of up to one additional year. A 503 company granted such temporary expansion shall be exempt from the requirements of paragraphs (b)(2), (c)(4), and (d) of § 108.503–1 of this part.

3. Section 108.503–2 is amended by revising paragraph (b) to read as follows:

§ 108.503–2 Certification.

* * * * *

(b) *Public Notice.* The proposed 503 company shall publish a notice in a newspaper of general circulation in the city, county or counties of the proposed area of operations, and shall furnish a certified copy to SBA within 10 days of the date of publication. Such notice shall include the name and location of the proposed company, its purpose and area of operations, and the names and addresses of its officers and directors. The public shall be afforded reasonable opportunity for the submission of written comments to the local SBA office.

* * * * *

4. Section 108.503–3 is amended by adding a sentence at the end of paragraph (f), introductory text, and by revising paragraph (f)(1) to read as follows:

§ 108.503–3 Operational Requirements for 503 Companies.

* * * * *

(f) *Reporting Requirements.* * * * The SBA may grant an extension of up to 60 days if the 503 company is awaiting the final report of its public accountant as set forth in the following paragaph.

(1) The financial statements contained in the annual report shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). If opinion audits or reviews are otherwise required by the 503 company, copies of the results shall be submitted.

* * * * *

5. Section 108.503–7 is amended by redesignating paragraphs (b)(1) through (b)(4) as paragraphs (b)(2) through (b)(5), adding a new paragraph (b)(1), and revising the newly redesignated (b)(3) to read as follows:

§ 108.503–7 Interim financing.

* * * * *

(b) *Source of interim financing.*

* * * * *

(1) Such financing is not derived, directly or indirectly, from any SBA program. * * *

(3) The interim lender is not associated with the small concern. (See definition in § 108.2 of this part.) This does not disallow the small concern or associates from paying for goods or services for subsequent reimbursement from an interim lender. See also § 108.503–5(d).

* * * * *

§ 108.503–8 [Amended]

6. Section 108.503–8 is amended by removing the last sentence of paragraph (a)(3).

7. Section 108.503–10 is amended by revising the last sentence of paragraph (a) to read as follows:

108.503–10 503 Company injection.

* * * * *

(a) * * * Without prior written approval from SBA, such injection shall be subordinate to the 503 Debenture and shall not be repaid at a faster rate than the 503 Loan.

* * * * *

8. Section 108.503–11 is amended by revising the fourth sentence of paragraph (b)(2) to read as follows:

§ 108.503–11 Central fiscal agent.

* * * * *

(b) * * *

(2) * * * A small concern may make this request through its 503 company to the appropriate SBA field office within the 60 days of the filing date. * * *

* * * * *

§ 108.504 [Amended]

9. Section 108.504(e) is amended by removing the phrases "of one half of one percent (0.5%)," and "of three eighths of one percent (0.375%) of the net debenture proceeds, see definition in § 108.2 of this part" and adding in place of the latter the phrase "to be published from time to time in the **Federal Register**".

Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).

Dated: November 27, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 92–702 Filed 1–14–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–96–AD]

Airworthiness Directives; Beech 100 and 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 91–18–11, which currently requires a one-time inspection and modification of the aft cowling doors of both engine nacelles on Beech 100 and 200 series airplanes. Since issuance of that AD, the Federal Aviation Administration (FAA) has determined that early production Beech 200 series airplanes have different stiffening beads on the inside of the cowling doors, which requires additional work than was specified in the service information. Updated service information has been issued. This action will retain the inspection and modification of AD 91–18–11 and incorporate this new service information. The actions specified by this AD are intended to prevent separation of an aft cowling door that could result in occupant injury if decompression or structural damage occurs.

DATES: Comments must be received on or before April 1, 1992.

ADDRESSES: Beech Mandatory Service Bulletin No. 2416, Revision I, dated December 1991, may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–96–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–96–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91–18–11, Amendment 39–8014 (56 FR 41927, August 26, 1991), currently requires a one-time inspection of the aft cowling door stiffeners for cracking on Beech 100 and 200 series airplanes, repair or replacement if found cracked, and a modification to the aft cowling doors of both nacelles. The actions are accomplished in accordance with the instructions in Beech Mandatory Service Bulletin (SB) No. 2416, dated July 1991.

Since issuance of AD 91–18–11, the FAA has determined that the stiffening beads on the inside of the cowling doors on early production Beech 200 series airplanes are different than that of later production series airplanes. Extra work is required on airplanes having this difference stiffening bead configuration.

The manufacturer (Beech) released interim information, Service (SVR) 025, that specifies procedures for performing the extra work required to bring early production Beech 200 series airplanes in compliance with AD 91–18–11. In addition, the FAA has granted alternative methods of compliances that approve SVR 025 as an equivalent method to a portion of AD 91–18–11 to the operators of 23 early production Beech 200 series airplanes having the above referenced stiffening bead configuration.

Beech has since incorporated the procedures of SVR 025 and Beech SB No. 2416 into one service document, Beech SB No. 2416, Revision I, dated December 1991. After reviewing all available information related to AD 91–18–11, including the referenced service information, the FAA has determined that AD action should be taken to incorporate the additional requirements needed to modify the cowling doors of early production Beech 200 series airplanes.

Since the condition described is likely to exist or develop in other Beech 100 and 200 series airplanes of the same type design, the proposed AD would retain the engine cowling door inspection and modification requirements of AD 91–18–11, but would require these requirements to be accomplished in accordance with Beech SB No. 2416, Revision I, dated December 1991. This action would supersede AD 91–18–11.

It is estimated that 1,730 airplanes in the U.S registry would be affected by the proposed AD, that it would take approximately 28 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,923,700. The cost impact of AD 91–18–11 is $1,781,900 (16 hours times $55 plus $150 for part times 1,730 airplanes). The proposed action would only require an additional cost imapct of $1,141,800 (12 hours times $55 times 1,730 airplanes). However, the additional 12 hours it would take to accomplish the proposed AD is only applicable to early production Beech 200 series airplanes. Because the FAA has no available way of determining how many airplanes this may be, the entire fleet number was used. The FAA anticipates the number of airplanes affected by the additional cost to be much smaller.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended].

2. Section 39.13 is amended by removing AD 91–18–11, Amendment 39–8014 (56 FR 41927, August 26, 1991), and adding the following new AD:

Beech: Docket No. 91–CE–96–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Numbers
200 and B200	BB–2 and BB–6 through BB–1404.
200C and B200C	BL–1 through BL–72 and BL–124 through BL–137.
200CT and B200CT.	BN–1 through BN–4.
200T and B200T	BT–1 through BT–33.
A100–1 (U–21J)	BB–3, BB–4, and BB–5.
A200 (C–12A)	BC–1 through BC–75.
A200 (C–12C)	BD–1 through BD–30.
A200C (UC–12B)	BJ–1 through BJ–66.
A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–51.
A200CT (FWC–12D).	BP–7 through BP–11.
A200CT (RC–12D)	GR–1 through GR–13.
A200CT (C–12F)	BP–52 through BP–71.
A200CT (RC–12G)	FC–1, FC–2, and FC–3.
A200CT (RC–12H)	GR–14 through GR–19.
B200C (C–12F)	BL–73 through BL–112 and BL–118 through BL–123.
B200C (UC–12F)	BU–1 through BU–10.
B200C (RC–12F)	BU–11 through BU–12.
B200C (UC–12M)	FC–1, FC–2, and FC–3.
B200C (RC–12M)	BV–11 and BV–12.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished (AD 91-18-11).

Note: If the operator has complied with AD 91-18-11, which is superseded by this AD action, then no further action is required.

To prevent separation of the aft cowling doors that could result in occupant injury if decompression or structural damage occurs, accomplish the following:

(a) Inspect and modify the aft engine cowling doors of both engine nacelles in accordance with the Accomplishment Instructions of Beech Mandatory Service Bulletin No. 2416, Revision I, dated December 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment supersedes AD 91-18-11, Amendment 39-8014.

Issued in Kansas City, Missouri, on January 8, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-888 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-249-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require the replacement of the tie rods for certain aft galley installations. This proposal is prompted by a determination that certain aft galley installations do not meet the requirements for emergency landing conditions. This condition, if not corrected, could result in the galley coming loose during an emergency landing and causing injury to passengers or cabin crew members.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-249-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-249-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-249-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The manufacturer has advised the FAA that the aft galley installation on certain Boeing Model 767 series airplanes is not capable of withstanding the emergency landing conditions requirements. The tie rod assemblies are not strong enough, and could result in the galley coming loose during an emergency landing and subsequently injuring passengers or cabin crew members.

The FAA has reviewed and approved Boeing Service Bulletin 767-25-0160, dated July 18, 1991, which describes procedures for the replacement of the tie rods for certain aft galley installations. The replacement tie rods serve to provide more support to keep the galley complex in place.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require the replacement of the tie rods for certain aft galley installations, in accordance with the service bulletin previously described.

Although airplane VF093 (variable number) is not listed in the effectivity section of the Boeing service bulletin, it is also subject to this proposal, and has been included in the applicability of the proposed rule.

There are approximately 22 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 9 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Modification parts will be provided by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal

would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–249–AD.

Applicability: Model 767 series airplanes listed in Boeing Service Bulletin 767–25–0160, dated July 18, 1991; and airplane having variable number VF093; certificated in any category.

Compliance: Required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the galley from coming loose during an emergency landing, accomplish the following:

(a) Replace the aft galley tie rods in accordance with Boeing Service Bulletin 767–25–0160, dated July 18, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1014 Filed 1–14–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–240–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which currently requires modification of the inboard edges of the rub strip on the inboard spoilers. That action was prompted by reports of overwing escape slides damaged by contacting sharp corners on the inboard spoilers. This condition, if not corrected, could render the overwing escape slides unusable in the event of an emergency evacuation. This action would require modification of additional inboard spoilers that were not previously identified.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–240–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–240–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 8, 1991, the FAA issued AD 91–15–13, Amendment 39–7077 (56 FR 34019, July 25, 1991), to require modification of the inboard edges of the rub strip on the inboards spoilers of certain Boeing Model 767 series airplanes. That action was prompted by reports indicating that overwing escape slides had been damaged by contacting sharp corners on the inboard spoilers. This conditions, if not corrected, could render the overwing escape slides unusable in the event of an emergency evacuation.

Since the issuance of that AD, additional part-numbered inboard spoilers have been identified which have sharp edges that could damage the overwing escape slide.

The FAA has reviewed and approved Boeing Service Bulletin 767–27–0104, Revision 2, dated September 12, 1991, which describes procedures for modifying the inboard spoiler rub strip. This revised service bulletin identifies and recommends modification of the additional part-numbered inboard spoilers.

Since this condition is likely to exist on other airplanes of this same type design, and AD is proposed which would supersede AD 91–15–13 with a new airworthiness directive that would

continue to require modification of the inboard spoiler rub strip. It would include additional part-numbered inboard spoilers that also would require such modification. The modifications would be required to be accomplished in accordance with the service bulletin previously described.

There are approximately 298 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,420.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–7077 and by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–240–AD. Supersedes AD 91–15–13, Amendment 39–7077.

Applicability: Model 737 series airplanes, as listed in Boeing Service Bulletin 767–27–0104, Revision 2, dated September 12, 1991, certificated in any category.

Compliance required as indicated, unless previously accomplished.

To prevent the overwing escape slide from being damaged by sharp edges of the rub strip on the inboard spoilers, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, within the next 9 months after August 29, 1991 (the effective date of Amendment 39–7077), modify the inboard edges of the rub strip on the inboard spoilers in accordance with Boeing Service Bulletin 767–27–0104, dated November 15, 1990, or Revision 1, dated May 30, 1991.

(b) For airplanes equipped with inboard spoiler assemblies, part numbers 113T4100–37, –38, –41, –42, –45, and –46: Within the next 9 months after the effective date of this AD, modify the inboard edges of the rub strip on the inboard spoilers in accordance with Boeing Service Bulletin 767–27–0104, Revision 2, dated September 12, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21. 199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1016 Filed 1–14–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–226–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes operated as freighters. This proposal would require inspection and modification of the life raft mooring line and inflation length. This proposal is prompted by reports of life rafts installed on freighters that do not have long enough mooring and/or inflation lines. This condition, if not corrected, could damage or render the life rafts unusable during deployment for ditching.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–226–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-226-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-226-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

During the original certification of the Boeing Model 747 freighter, the FAA determined that the standard 20-foot long mooring line for the life raft, as required by Technical Standing Order (TSO)-C12, was not acceptable for this installation. For the Model 747 freighter, the life raft must be launched from either the overhead hatch or the crew emergency exit on the upper deck. The ditching height for the Model 747 for the two ditching exits dictates the mooring line length. The line's length is measured from the attachment fitting on the end of the mooring line to the connecting point on the raft. The mooring line must be no less than 39 feet long and no more than 44 feet long. This length permits the life raft to be attached to the airplane and prevents the life raft from drifting out of reach prior to boarding. The inflation length is the distance the life raft must be from its mooring line attachment point for the inflation of the life raft to be initiated. Inflation should begin at not less than 33 feet and not more than 38 feet as defined by the mooring line length.

The FAA has determined that many of the Model 747 freighters were delivered from the manufacturer with incorrect length mooring lines and/or incorrect inflation length. This condition, if not corrected, could damage or render the life rafts unusable during deployment for ditching.

The FAA has reviewed and approved Air Cruisers Service Bulletin 35-25-2, dated October 30, 1990, and Air Cruisers Service Bulletin 35-25-3, dated October 22, 1990, which describe procedures for modifying the life raft mooring line and inflation length on certain life rafts manufactured by Air Cruisers.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require inspection and modification, if necessary, of the mooring line and inflation length of Air Cruisers life rafts installed on Boeing Model 747 freighters. These actions would be required to be accomplished in accordance with the Air Cruisers service bulletins previously described. Life rafts manufactured by companies other than Air Cruisers would be required to accomplish the same action in a manner approved by the FAA.

There are approximately 175 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 75 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $82,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-226-AD.

Applicability: Model 747 series airplanes operated as freighters, certificated in any category.

Compliance: Required, as indicated, unless previously accomplished.

To prevent damaged or unusable life rafts due to improper mooring line and inflation length, accomplish the following:

(a) Within the next 6 months after the effective date of this AD, inspect the life raft mooring line and inflation length. The mooring line length is measured from attachment fitting on the end of the mooring line to the connecting point on the raft. The mooring line must be no less than 39 feet long and no more than 44 feet long. The inflation length is the distance the life raft must be from its mooring line attachment point for inflation of the life raft to be initiated. Inflation should begin at not less than 33 feet and not more than 38 feet as defined by the mooring line length.

(1) For life rafts with mooring line length and inflation length that meet the measurements specified in paragraph (a) of this AD no additional action is required.

(2) For life rafts with mooring line length and inflation length that do not meet the measurements specified in paragraph (a) of this AD, accomplish the following prior to further flight:

(i) For life rafts listed in Air Cruisers Service Bulletin 35-25-3, dated October 22, 1990: Modify the life raft in accordance with the service bulletin.

(ii) For life rafts listed in Air Cruisers Service Bulletin 35-25-2, dated October 30, 1990: Modify the lift raft in accordance with the service bulletin.

(iii) For all other life rafts: Modify the life raft in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1017 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-267-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-7 series airplanes. This proposal would require a one-time dye penetrant inspection to detect cracks in flap track No. 1, and replacement of cracked flap tracks; and, if no cracks are found, modification of the lower surface of flap track No. 1. This proposal is prompted by reports of cracks found on in-service airplanes on the lower surface of flap track No. 1 due to high loads imposed by the flap roller bearing assembly. The actions specified by the proposed AD are intended to prevent reduced structural integrity of flap track No. 1.

DATES: Comments must be received by March 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-267-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information reference in the proposed rule may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue S.W., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11561; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-267-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-267-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority of Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Division Model DHC-7 series airplanes. TCA advises that there have been reports of cracks found on in-service airplanes on the lower surface of flap track No. 1. These cracks were due to high loads imposed by the flap roller bearing assembly. This condition, if not corrected, could result in reduced structural integrity of flap track No. 1.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin 7-53-15, Revision A, dated November 27, 1981, which describes procedures to perform a one-time dye penetrant inspection to detect cracks in flap track No. 1; replacement of cracked flap tracks; and, if no cracks are found, modification of the lower surface of flap track No. 1. This modification consists of removing the inboard trailing flaps and reworking each flap track roller guide, securing new facing plates to each roller guide, and reworking the roller bearing assembly to strengthen the lower surface of flap track No. 1. TCA has classified this service bulletin as mandatory and has issued Canadian Airworthiness Directive CF-91-08, dated May 10, 1991, in order to assure the airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, TCA has kept the FAA totally informed of the above situation. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time dye penetrant inspection to detect cracks in flap track No. 1, and replacement of cracked flap tracks, if found. If no cracks are found, a modification of the lower surface of flap track No. 1 would be required, which will prevent the possibility of subsequent cracking. The actions would be required to be accomplished in accordance with the service bulletin previously described.

It is estimated that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 36 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $21,790.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, LTD., De Havilland Division: Docket 91-NM-267-AD.

Applicability: Model DHC-7 series airplanes; serial numbers 1 through 23; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of flap track no. 1, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time dye penetrant inspection to detect cracks in flap track no. 1, in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(b) If cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the flap track, in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(c) If no cracks are evident or suspected as a result of the inspection required in paragraph (a) of this AD, within 6 months after the effective date of this AD, modify the lower surface of flap track no. 1, in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 7, 1981.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1018 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-220-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-8 series airplanes, which currently requires structural inspections to detect fatigue cracking, reporting of the inspection results, and repair or replacement, as necessary to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. Fatigue cracking, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes. This action would modify the existing sampling program to: (a) Require additional visual inspections of all Principal Structural Elements (PSEs) on certain airplanes, (b) include expanded/modified PSEs, (c) revise the reporting requirements, and (d) increase the sample size. This proposal is prompted by new data submitted by the manufacturer indicating that additional inspections and an expanded sample size are necessary to increase the confidence level of the statistical program to ensure timely detection of cracks in PSEs.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-220-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Attention: Business Unit Manager, Technical Publications and Technical Administrative Support C1-L5B (54-60), Long Beach, California 90801. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John L. Cecil, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5322.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-220-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-220-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On May 19, 1987, the FAA issued AD 87-14-06, Amendment 39-5631 (54 FR 25591, July 8, 1987), applicable to McDonnell Douglas Model DC-8 series airplanes, to require structural inspections and necessary repair or replacement, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. That action was prompted by a structural re-evaluation, which identified certain significant structural components to inspect for fatigue cracks. Fatigue cracks in these components, if not detected and corrected in a timely manner, could result in a compromise of the structural integrity of these airplanes.

Since issuance of that AD, the manufacturer has issued McDonnell Douglas Report No. L26-011, DC-8 Supplemental Inspection Document (SID), Volume I, Revision 3, dated March 1991; Volume II, Revision 5, dated March 1991; and Volume III, Revision 5, dated April 1991. This revision revises the sampling program with additional procedures to:

a. Add visual inspections of all Principal Structural Elements (PSEs) on certain airplanes listed in the SID planning data, at least once during the interval between the start date (SDATE) and the end date (EDATE) established for each PSE. (The additional visual inspections, defined in Section 2 of Volume II, are required on airplanes that have not been inspected in accordance with Section 2 of Volume II of the SID.)

b. Include expanded/modified PSEs;

c. Use a revised inspection reporting form;

d. Report the results of the new visual inspections in addition to those required by the existing AD; and

e. Increase the sample size.

The FAA has reviewed and approved the revised SID and has determined that the additional visual inspections, expanded/modified PSEs, revised reporting requirements and increased sample size are necessary in order to provide an acceptable level of confidence that cracks in PSEs do not exist in the fleet.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 87-14-06 with a new airworthiness directive that would require an additional visual inspection of all airplanes listed in the SID planning data at least once during each inspection interval, and would require the reporting of the results, both positive and negative, in accordance with the revised SID documents previously described.

There are approximately 337 Model DC-8 series airplanes of the affected design in the worldwide fleet. It is estimated that 222 airplanes of U.S. registry and 15 U.S. operators would be affected by this AD. Incorporation of the Supplemental Inspection Document program to an operator's maintenance program, as originally required by AD 87-14-06, is estimated to necessitate 500 work hours (per operator), at an average labor cost of $55 per work hour. Based on these figures, the cost to the 15 affected U.S. operators to initially incorporate the SID program is estimated to be $412,500.

The incorporation of the additional procedures proposed in this AD action would require approximately 544 additional work hours per operator to accomplish, at an average labor cost of $55 per work hour. Based on these figures, the cost to the 15 affected U.S. operators to incorporate the proposed revisions of the SID program is estimated to be $448,800.

The recurring inspection cost, as originally required by AD 87-14-06, is estimated to be 245 work hours per airplane per year. The procedures added to the program by this proposed AD action would require approximately 53 additional work hours per airplane per year to accomplish. The average labor charge would be $55 per work hour. Based on these figures, the recurring inspection total cost impact of the AD on U.S. operators is estimated to be $16,390 per airplane, or $3,638,580 for the affected U.S. fleet.

Based on the above figures, the total cost impact of this AD is estimated to be $4,087,380 for the first year, and $3,638,580 for each year thereafter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(G); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6330 and by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. 91-NM-220-AD. Supersedes AD 87-14-06, Amendment 39-6330.

Applicability: Model DC-8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within one year after August 10, 1987 (the effective date of AD 87-14-06, Amendment 39-5631), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSEs) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26-011, "DC-8 Supplemental Inspection Document (SID)," dated December 1985, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-

511) and have been assigned OMB Control Number 2120–0056.

(b) Within 6 months after the effective date of this AD incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSEs) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–011, DC–8 Supplemental Inspection Document (SID), dated March 1991, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Section 2 of Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

(c) Cracked structure detected during the inspections required by paragraphs (a) and (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Directorate.

(d) An alternative method of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1015 Filed 1–14–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF46

Claims Based on Chronic Effects of Exposure to Mustard Gas

AGENCY: Department of Veterans Affairs.

ACTION: Proposed Rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing a regulation to govern the adjudication of compensation claims for disabilities or deaths resulting from the chronic effects of in-service exposure to mustard gas under certain circumstances. This proposed regulation is necessary because VA believes that additional adjudication provisions are warranted for certain claims involving in-service exposure to mustard gas. The intended effect of this amendment is to expand and extend compensation eligibility.

DATES: Comments must be received on or before February 14, 1992. Comments will be available for public inspection until February 24, 1992. The amendment is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until February 24, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Some Naval personnel were experimentally exposed to mustard gas during full-body, field or chamber tests of protective equipment and clothing conducted at the Naval Research Laboratory, located at Edgewood Arsenal, Washington, DC, between 1943 and 1945. Similar testing may have been conducted at other locations during World War II. These World War II tests were classified, participants were instructed not to discuss their involvement, and medical records associated with the tests are generally unavailable. No long-term follow-up examinations were conducted. For these reasons, some participants may not have filed claims with VA for disabilities resulting from mustard gas poisoning, or, if they did file claims, may have experienced difficulty in establishing entitlement to benefits.

VA believes that the special circumstances surrounding these World War II testing programs have placed veterans who participated in them at a disadvantage when attempting to establish entitlement to compensation for disability or death resulting from experimental exposure. The proposed rule specifies that, if exposure occurred under the described circumstances, disabilities or deaths resulting from certain diseases are to be recognized as connected to a veteran's exposure in-service.

A review of the available medical literature by Veterans Health Administration (VHA) personnel indicates that the chronic, long-term effects of acute mustard gas poisoning may include laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, and corneal opacities. Chronic forms of these conditions which developed subsequent to experimental exposure during World War II will be service-connected. We propose to implement this judgment by adding a new section, § 3.316, to 38 CFR part 3.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: September 20, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

2. Add a new section to read as follows:

§ 3.316 Claims based on chronic effects of exposure to mustard gas.

Exposure to mustard gas while participating in full-body, field or chamber experiments to test protective clothing or equipment during World War II, together with the development of a chronic form of any of the following conditions manifested subsequent thereto, is sufficient to establish service connection for that condition: laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, and corneal opacities.

[FR Doc. 92–1000 Filed 1–14–92; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO11–1–5369; FRL–4093–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Ambient air quality data for the period 1989 through 1991 indicate that the Kansas City ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone. Therefore, in accordance with the Clean Air Act Amendments of 1990, the state of Missouri has submitted an ozone maintenance plan which projects continued attainment of the ozone standard in the Kansas City area, and has requested redesignation of the area to attainment. EPA is proposing to approve the Kansas City ozone maintenance plan as a revision to the Air Pollution Control State Implementation Plan (SIP) for the state of Missouri. In conjunction with the maintenance plan, EPA is also proposing to approve Missouri's request to redesignate the Kansas City area to attainment with respect to the ozone NAAQS. In a separate **Federal Register** notice published today, EPA is also proposing to approve an analogous plan and redesignation request submitted by the Kansas Department of Health and Environment to address the Kansas portion of the ozone nonattainment area.

DATES: Comments must be received by February 14, 1992.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document (TSD) are available for public review at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 551–7020 (FTS 276–7020).

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1977 ("the 1977 Act") required areas failing to meet the ozone NAAQS to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The Kansas City metropolitan area (KCMA) was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on March 3, 1978. (The designations for Missouri are codified at 40 CFR 81.326.) The Missouri Department of Natural Resources (MDNR) submitted a Part D ozone attainment SIP on July 2, 1979, which EPA fully approved as meeting the requirements of section 110 and Part D of the 1977 Act. The 1979 SIP projected attainment by December 31, 1982, making the KCMA area a "nonextension area" under section 172 of the 1977 Clean Air Act. Although the KCMA appeared to have met the ozone standard by the end of 1982, additional violations occurred in 1983 and 1984. On February 20, 1985, EPA notified the Governor of Missouri that the SIP was substantially inadequate to attain the ozone NAAQS (50 FR 26198).

In response to the SIP call, MDNR submitted a revised ozone control strategy on May 26, 1986, which demonstrated attainment by December 31, 1987. EPA proposed to approved the revised SIP on June 30, 1988 (53 FR 24735). At the time of the proposal, EPA believed that the area had achieved the standard, as the 1985 through 1987 air quality data showed attainment. However, ozone violations occurred in June of 1988. Therefore, EPA fully approved the revised control strategy (54 FR 10322 and 54 FR 46232), but deferred action on the attainment demonstration portion of the SIP.

More recently, however, the 1989 through 1991 air quality data show attainment of the ozone NAAQS. Therefore, in an effort to comply with the Clean Air Act Amendments (CAAA) of 1990 (Pub. L. 101–549), and to ensure continued attainment of the standard with an adequate margin of safety, the state submitted an ozone maintenance SIP for the KCMA on October 9, 1991. Accompanying the maintenance SIP are new and amended rules to control certain categories of sources which emit volatile organic compound (VOC) emissions, and the state's request to redesignate the area to attainment with respect to the ozone NAAQS.

II. Evaluation Criteria

Together the Missouri and Kansas submittals meet all applicable requirements of the 1990 Clean Air Act. The EPA rulemaking docket checklist (included with EPA's TSD) provides a listing of applicable approval criteria. However, some of these criteria merit additional discussion which is contained below.

With its submittal of the additional VOC rule actions, Missouri meets the Clean Air Act requirement that the SIP include all reasonably available control measures (RACM) (section 172(c)(1)). The rules are also consistent with EPA policy as outlined in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**," dated May 25, 1988 (referred to hereafter as the "Blue Book").

The Missouri submittal also includes a redesignation request, in which the state demonstrates that the area has fulfilled the redesignation requirements of the amended Act. Section 107(d)(3)(E) of the Act provides specific requirements for redesignating a nonattainment area to attainment:

A. The area must have attained the applicable NAAQS (section 107(d)(3)(E)(i));

B. the area has a fully approved SIP under section 110(k) of the Act (section 107(d)(3)(E)(ii));

C. the air quality improvement must be permanent and enforceable (section 107(d)(3)(E)(iii));

D. the area must have a fully approved maintenance plan pursuant to section 175A of the Act (section 107(d)(3)(E)(iv)); and

E. the area has met all relevant requirements under section 110 and part D of the Act (section 107(d)(3)(E)(v)).

Section 175A of the Act sets forth the maintenance plan requirement for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures adequate to assure prompt correction of the air quality problem.

III. Review of State Submittal

A. Maintenance Plan

1. Air Quality Data

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request. (The redesignation request is discussed in Section III.C of this notice.) Ambient ozone monitoring data for 1989 through 1991 show attainment of the NAAQS in the Kansas City area, i.e., less than one expected exceedance per year. For a complete discussion of the NAAQS, the reader is referred to 40 CFR 50.9 and appendix H to that section. Although the 1991 data are not yet fully quality assured, EPA will review the quality of these data in conjunction with its final action of this SIP submittal. EPA will not take final action approving the redesignation unless it determines that attainment is based on three years of quality assured data.

Prior to the 1991 ozone season, the state had planned to base the redesignation request on the 1987 through 1989 air quality data; however, these data did not indicate attainment in strict accord with EPA's interpretation of the ozone standard. Although, under appendix H, attainment cannot be shown by the 1987 through 1989 data, the state's demonstration justifies the use of 1989 emissions levels as being representative of attainment.

2. Emissions Inventory

MDNR submitted comprehensive inventories of actual VOC emissions from point, area, and mobile sources. Because 1989 emission data were not consistently available for all VOC sources in the KCMA, 1988 was selected as the base year and was used to project emissions to 1989 and future years. The 1989 VOC inventory is considered most representative of attainment conditions because: (1) No ozone exceedances occurred in 1989; and (2) EPA's Phase I gasoline volatility controls (54 FR 11868) were implemented in 1989, resulting in significant VOC emission reductions.

Therefore, the attainment emission inventory for purposes of this SIP is based upon the 1989 emission values. All VOC emission estimates were reported in kilograms per typical summer day. The state submittal contains the detailed inventory data and summaries by county and source category.

The state demonstrated that point source VOC emissions were not artifically low due to local economic downturn. The state examined historical employment data for the Kansas City area for the years 1987 through 1989. No economic downturn was evident; employment in the manufacturing sector remained relatively stable during the period.

The state's inventory methodology was consistent with EPA guidance applicable at the time the plan was being developed (EPA–450/4–88–19, December 1988). Eighty percent rule effectiveness was applied for source categories subject to state regulations. Stationary sources with emissions greater than 10 tons per year were inventoried as point sources.

Mobile source emission estimates were generated using EPA's MOBILE4 model. For the 1988 base year (prior to EPA volatility restrictions), a 10.5 psi RVP gasoline volatility was used. In accordance with the EPA Phase I volatility restrictions, a 9.5 psi RVP gasoline volatility was input for 1989. For 1990 and 1991, a gasoline volatility of 9.0 psi RVP was used in accord with the KCMA's voluntary RVP reduction program (discussed further below). In accord with EPA's original June 11, 1990, Phase II volatility restrictions (56 FR 23658), a gasoline volatility of 7.8 psi RVP was assumed for 1992 and later years.

Due to the marginal, but persistent, history of ozone nonattainment in the KCMA, EPA and the states of Missouri and Kansas believed that an additional areawide VOC control measure was necessary to ensure that the ozone standard could be maintained with an adequate margin of safety. The states of Missouri and Kansas, the Mid-America Regional Council (MARC), and the Chamber of Commerce worked cooperatively to implement a voluntary program to control the volatility of gasoline supplied to the area for 1990 and 1991. Despite its voluntary nature, the program reduced gasoline volatility from 9.5 to 9.0 psi RVP from June 1 through September 1 in both 1990 and 1991. All petroleum refiners and pipeline companies agreed to participate. Also, the EPA Field Operations Support Division performed volatility tests of gasoline samples from the KCMA. The tests confirmed that the program achieved its goal. (As discussed in section III.A.3. below, additional reduction of gasoline volatility will be accomplished, beginning in 1992, as a result of EPA's Phase II volatility standards.)

The voluntary RVP control program resulted in a 8,189 kg/day areawide reduction in the projected 1990 VOC inventory. This equates to a 3.3 percent reduction from the 1989 attainment VOC inventory. Thus, the 8,189 kg/day VOC reduction serves as the attainment margin of safety. The states have committed to maintain future VOC emissions at or below the co-called "action level", i.e., VOC emissions will not be allowed to encroach upon the margin of safety. The action level concept is detailed in the above-mentioned EPA TSD.

3. Demonstration of Continued Attainment

a. *State demonstration.* The state's demonstration of continued attainment relies, in part, on EPA's Phase II gasoline volatility requirements. On June 11, 1990 (55 FR 23658), EPA promulgated state-by-state Phase II RVP gasoline standards in order to continue reductions in VOC emissions. Accordingly, under the Phase II program, a fuel volatility limit of 7.8 psi RVP was scheduled to become effective in 1992 and each year thereafter during the ozone season (May through September) in the state of Missouri.

However, the federal gasoline volatility requirements were modified by the 1990 CAAA, and EPA promulgated revised Phase II gasoline volatility requirements on December 12, 1991 (56 FR 65704). This latest rule revises the maximum allowable RVP from 7.8 to 9.0 psi in those areas which are currently designated as unclassifiable or in attainment with the NAAQS for ozone. However, as applicable to the KCMA, the RVP limit of 7.8 will go into effect as the area is presently designated nonattainment.

The Missouri portion of the KCMA was designated as nonattainment for ozone in the recently published part 81 Federal Register notice, November 6, 1991 (56 FR 56788). Therefore, continuation of the 7.8 psi RVP limit is federally enforceable in the KCMA, even after the area is redesignated to

attainment, because of its nonattainment designation in the November 6, 1991 **Federal Register** notice. Also, the requirement for 7.8 psi RVP volatility is deemed necessary to ensure attainment and maintenance of the ozone standard as demonstrated by the mobile source emissions inventory projections (based on use of 7.8 psi RVP) in Missouri's ozone maintenance plan for the KCMA.

Areawide VOC emission were projected for the ten-year period following maintenance plan development. The projections show that the ozone standard will be maintained, i.e., VOC emissions are not expected to exceed the "action level" during this time period. Areawide VOC emissions are expected to decrease by over 20 percent during the next ten years.

The state's projection of VOC emissions is based on the Federal Motor Vehicle Control Program and EPA's Phase II volatility controls. The projections were developed prior to passage of the 1990 CAAA Amendments; thus, the federal on-board vapor recovery requirement and the new federal tailpipe standards were not considered.

b. *Additional EPA Analysis.* At the time Missouri and Kansas developed their maintenance plans, the current version of EPA's mobile source emissions model was MOBILE4.0. Since that time, MOBILE4.1 has become available. MOBILE4.1 was run to determine that effect, if any, the new model would have on the demonstration of continued attainment of the ozone standard. For any given year, MOBILE4.1 predicted lower VOC emissions than MOBILE4.0; however, the relative year-to-year trends were essentially identical. Thus, the new effect of MOBILE4.1 on the demonstration of continued attainment was not significant.

Using MOBILE4.1, the KCMA attainment level of VOC emissions changed from 245,060 kg/day to 227,007 kg/day. For this analysis, EPA determined the action level of VOC emissions to be 218,009 kg/day. Using MOBILE4.1 for projecting the mobile source component of the emissions inventory, the total KCMA VOC emissions in the year 2000 are projected to be 183,601 kg/day, which is 16 percent below the action level. Given this substantial margin (34,408 kg/day), EPA believes that VOC emissions will remain below the action level through the year 2002. (ten years after the redesignation becomes effective).

EPA also performed an analysis of projected NO_x emissions for the KCMA. Given that VOC emissions will remain below the action level (as discussed above in section III.A.2.) for the next ten years, EPA wished to determine what increases to NO_x emissions, if any, could be anticipated. Even with no growth in VOC emissions, an increase in NO_x emissions (and the associated changes in atmospheric chemistry) could result in violations of the ozone standard in the KCMA. EPA's analysis showed no increase in KCMA NO_x emissions through the year 2005. Therefore, with VOC emissions at, or below, the action level, and with NO_x emissions not increasing, violations of the ozone standard are not anticipated. Pursuant to section 175A(a) of the Act, EPA finds that the maintenance plan demonstrates continued attainment of the ozone standard for the ten-year period following the effective date of the redesignation.

4. Annual Tracking and Inventory Updates

Continued attainment of the ozone NAAQS in the KCMA depends, in part, on the state's efforts toward tracking VOC emissions. The state has committed to completing comprehensive VOC point source inventory updates at least twice in each five-year period following the effective date of the area's redesignation. For years in which no comprehensive update is performed, the state will update the inventory using source permit and shutdown data.

Area and mobile source inventories will be updated at least once every five years to take advantage of new data and estimation procedures, e.g., U.S. Census data, revised EPA mobile source emission models, etc. For years in which no comprehensive area and mobile source inventories are developed, the state will estimate emissions using the most recently available projections from existing area and mobile source inventories

The state will submit annual progress reports to EPA which will summarize available VOC emissions data. Thus, on an annual basis, EPA and the state can ascertain whether actual VOC emissions are within the attainment inventory.

5. Contingency Plan

The level of VOC emissions in the KCMA will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Although further reductions of VOC emissions are projected to occur during the next ten years, the state has provided contingency measures to be implemented in the event of a future ozone air quality problem.

Two potential scenarios could result in the implementation of contingency measures. The first scenario would be an increase in VOC emissions which exceeds the "action line" level (encroaching into the emission margin of safety), but does not result in ozone violations. The second situation, regardless of the actual VOC emissions, would be violations of the NAAQS. As mentioned above, the state will provide annual progress reports which will evaluate the integrity of VOC emissions safety margin. Section 5.3 of the state submittal gives the details of the contingency provisions under both scenarios. Contingency measures include: (1) VOC emission offsets for new and modified stationary sources; (2) transportation control measures; (3) Stage II vapor recovery; (4) a vehicle I/M program; (5) VOC controls on minor new sources; and (6) RACT for sources covered by new EPA Control Technique Guideline (CTG) documents. Contingency controls would require the state's legislative and/or administrative approval before they could be implemented. The contingency measures provided in the state submittal meet the requirements of section 175A(d) of the Act.

6. Commitment to Submit Subsequent Maintenance Plan Revisions

In accord with section 175A of the Act, the state has committed to submit a revised maintenance SIP eight years after the area is redesignated to attainment.

B. Additional Reasonably Available Control Technology (RACT) Regulations

In accord with section 172(b)(2) of the 1977 Act, the KCMA was required to have SIP rules representing RACT for all VOC source categories covered by Group I, II, and III CTG documents. RACT rules were also required for all major non-CTG sources.

At the time EPA approved the SIP control strategy (54 FR 10322 and 54 FR 46232), EPA and the state believed that all the RACM requirements had been met; rules were in place for all applicable CTG and non-CTG source categories. Moreover, the rules had been revised for consistency with EPA's "Blue Book." However, during the maintenance plan development process, EPA learned that the state needed an additional RACT regulation to address an unregulated non-CTG major source category—lithographic printing. The state also made corrections to its cutback asphalt and definitions rules. These rule actions are discussed below. All of the state's existing and new VOC RACT rules will remain in effect after

the KCMA is redesignated to attainment for the ozone NAAQS.

10 CSR 10–2.340 Control of Emissions from Lithographic Printing Facilities

This non-CTG RACT rule applies to nine existing facilities and new facilities that have the potential to emit more than 100 TPY of VOC from lithographic printing operations. VOCs from heat-set inks and the associated dryers are required to be reduced by 90 to 93 percent over pre-RACT levels through the installation of add-on control equipment. Evaporative emissions from cleanup solvents will be reduced by 49 percent, with VOCs from fountain solutions decreasing by 8 percent. VOC emission reductions from fountain solutions are not as large as had been anticipated because many of the subject facilities have already reduced the use of alcohol additives, or have converted to low-VOC alcohol substitutes. The rule was adopted by the Missouri Air Conservation Commission (MACC) after proper notice and public hearing and will become effective ten days after its date of publication in the Code of State Regulations (CSR).

Appendix G of the state submittal contains a demonstration that the rule constitutes RACT. In its RACT determination, the state generally relied upon research conducted by other states that have proposed or adopted similar rules, feedback from local lithographic printers, information provided by printing trade associations and trade publications, and research conducted for EPA's pending publication of a CTG document for lithographic printing (scheduled for release sometime in 1992–93).

10 CSR 10–2.220 Liquefied Cutback Asphalt Paving Restricted

This rule, as amended, now applies during the months of April through October. Previously, the applicable season had been May through September. The rule now includes recordkeeping requirements on the production, sales, and use of cutback asphalt. Such records must be maintained for at least two years and must be made available to the state upon request. The rule amendment was adopted by the MACC after proper notice and public hearing and will become effective ten days after its date of publication in the CSR.

10 CSR 10–6.020 Definitions

In this rule, the state expanded its definition of "person" so it would better apply to the gasoline marketing industry. The term "person" now applies to any legal successor, employees, or agents of the entities previously included in the definition. The definitions of "Reid Vapor Pressure" and "gasoline" were updated, and a definition of "retail outlet" was added. The amendments to the definitions rule were adopted by the MACC after proper notice and public hearing and will become effective ten days after being published in the CSR.

EPA believes that these three rules (as discussed above) constitute RACT for all affected sources. Therefore, EPA proposes approval of these rules.

C. Redesignation Request

The Missouri redesignation request for the KCMA meets the five requirements of section 107(d)(3)(E). Following is a brief description of how the state has fulfilled each of these requirements. EPA's TSD contains a more in-depth analysis of the submittal with respect to certain of these criteria.

1. Attainment of the Ozone NAAQS

The KCMA has provisionally met the first statutory criterion of attainment of the ozone NAAQS. EPA's analysis of the ozone air quality data is discussed above in Section III.A.1. EPA will not take final action approving the redesignation unless it determines that attainment is based on three years of quality assured data.

2. Reductions are Permanent and Enforceable

EPA approved the Missouri SIP control strategy for the KCMA satisfied that the rules, and therefore the emission reductions achieved as a result of those rules, were enforceable. Since that time, the Agency has remained satisfied with those rules and has not issued a SIP call pursuant to section 110(a)(2)(H), finding them to be inadequate. The emissions inventory, discussed in section III.A.2. above, is based on reductions achieved through control measures in the SIP; therefore, EPA finds that the emission reductions are permanent and enforceable.

3. A Fully Approved Maintenance Plan

In today's notice, EPA is proposing approval of the state's maintenance plan for the KCMA. As discussed above in Section III.A., EPA finds that the Missouri submittal meets the requirements of section 175A. If EPA determines after notice and comment that it should give final approval to the maintenance plan, the KCMA will have a fully approved maintenance plan in accordance with section 175A. EPA will not redesignate the area to attainment before it gives final approval to the maintenance plan.

4. Fully Approved SIP Meeting the Requirements of section 110 and Part D

a. *Section 110 Requirements.* In 1980 and 1989, EPA fully approved the state's SIP for the KCMA as meeting the requirements of section 110(a)(2) of the 1977 Act (45 FR 24140, 45 FR 85005, 54 FR 10322, and 54 FR 46232). The amended Act, however, modifies several of these requirements. Moreover, the amended Act requires that for redesignation a nonattainment area must have a fully approved SIP under section 110(k)—a new provision. EPA addresses the modified portions of section 110(a)(2) below. As discussed in Section III.B above, the state has submitted two new rules for SIP approval. By today's action, EPA proposes approval of these two rules, and the maintenance plan. Contingent upon final approval of the SIP, EPA proposes approval of the Missouri SIP for the KCMA under section 110(k) of the amended Act. EPA will not take final action redesignating the KCMA to attainment until it has issued a final approval of the entire SIP for the KCMA.

Although section 110 was amended by the CAAA, the KCMA SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance—section 110(a)(2)(B); (C); (E) (i) and (ii); (F); (G); (H); (J); (L) and (M)—and, therefore, EPA has determined that the presence of a fully approved SIP indicates that these requirements have been met.

A few of the other requirements deserve a more detailed analysis. First, the section 110(a)(2) requirement that all elements of the SIP are enforceable, is essentially the same as the section 172(c)(6) requirement. As discussed below in relation to the section 172(c)(6) requirement, we have found that the existing SIP contains the necessary enforceable measures. Section, as to section 110(a)(2)(D), which also remains essentially unchanged, it is important to note that the state has provisions adequate to ensure that it is not contributing to nonattainment problems across the state border. These provisions are found in the existing SIP. Third, section 110(a)(2)(E)(iii) establishes a new requirement that the state retain the responsibility for ensuring adequate implementation of the SIP elements. Since the state adopted and submitted the rules, it has retained direct responsibility for ensuring adequate implementation. Fourth, new section 110(a)(2)(I) reinforces the requirement that the state comply with all Part D requirements (discussed further below). Finally,

section 110(a)(2)(K) reinforces EPA's authority to require states to do air quality modeling to support SIP demonstrations. Since EPA is approving the demonstration of continued attainment in the maintenance plan, Missouri has met this requirement for purposes of redesignating the Missouri portion of the Kansas City ozone nonattainment area to attainment.

b. *Part D Requirements.* Before the KCMA may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth requirements applicable to all nonattainment areas regardless of classification. Subpart 2 of Part D establishes requirements for areas classified as marginal or above. For ozone nonattainment areas, classification is based on the design value of the area. Areas that violated the ozone standard during the three-year period (1987 through 1989), but had a design value of less than 0.121 ppm, fell below the classification cutpoint of section 181 and were, therefore, deemed "submarginal" as of the date of enactment of the 1990 Amendments to the Act. On November 6, 1991, the KCMA was classified as submarginal (56 FR 56694). Therefore, in order to be redesignated, the state need only meet the requirements of subpart 1 of Part D. Specifically, the state must meet the requirements set forth in section 172(c) and section 176.

1. Section 172(c) Plan Provisions

Since EPA did not issue a SIP call after the state's 1988 approved submittal, the section 172(c)(1) RACM requirement (which is the same as the requirement is preamended section 17(b)(2) and (3)) was met by EPA's approval of the SIP under the preamended Act. The state has actually attained the standard based on the three years of data from 1989 through 1991. Section 172(c)(1) requires the state to adopt and implement RACM as expeditiously as practicable and to provide for the attainment of the NAAQS. At the time EPA approved the KCMA plan, the Agency determined that it was consistent with RACT and RACM requirements of the Act. As discussed previously herein, EPA later determined that additional RACT rules were needed in the KCMA. The additional RACT rules, included in the state submittal, fulfill the RACT and RACM requirements of the Act.

The RACM requirement also provides that the SIP must provide for attainment. EPA never acted on Missouri's attainment demonstration for the KCMA. Under the amended Clean Air Act, the attainment demonstration requirement no longer applies to ozone nonattainment areas that are classified as marginal (section 182(a)(4)). For marginal areas, this specific provision overrides the general attainment demonstration requirement of section 172(c)(1) that is applicable to all ozone nonattainment areas. On November 6, 1991, the KCMA was designated as a submarginal ozone nonattainment area (56 FR 56694). Since submarginal areas, such as Kansas City, have an even less severe ozone problem than marginal areas, EPA is interpreting the section 172(c)(1) attainment demonstration requirement not to apply to submarginal areas. Therefore, it is not necessary for EPA to take final action on the existing attainment demonstration for purposes of redesignating the Missouri portion of the Kansas City ozone nonattainment area.

Several section 172(c) requirements lose their continued force once an area has demonstrated attainment and maintenance of the NAAQS. The requirement for reasonable further progress (RFP) only has relevance during the time it takes an area to attain the NAAQS—each year the area must make RFP toward attainment. EPA originally approved the KCMA RFP demonstration under preamended section 172(c)(2) for the period preceding the statutorily approved attainment date. The preamended section 172(b)(3) requirement is essentially the same as the new section 172(c)(2) RFP requirement. Since the KCMA has attained the NAAQS, its SIP has already achieved RFP toward that goal. In addition, because the KCMA has attained the NAAQS and is no longer subject to an RFP requirement, the section 172(c) contingency measures are not applicable. Such contingency measures must take effect if the area fails to meet an RFP milestone or fails to attain the NAAQS; the KCMA no longer has RFP milestones and has already attained the standard. The area, however, is still subject to the section 175A contingency measures.

Similarly, once an area is redesignated to attainment, nonattainment new source review (NSR) requirements are not applicable. The area is then subject to prevention of significant deterioration (PSD) requirements instead of the NSR program. EPA does not believe it appropriate to require the state to adopt a revised NSR program (meeting the requirements of the amended Act) just to qualify for redesignation, since that program will be replaced by the existing Missouri PSD program upon redesignation and any corresponding amendments to the state rules.

As discussed in Section III.A.2. above, the state submittal includes an emissions inventory. The maintenance plan emissions inventory fulfills the section 172(c) requirement.

2. Conformity

Section 176 of the Act requires states to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations and to submit these procedures as a SIP revision by November 15, 1992. EPA has not promulgated final conformity regulations; however, the state has committed to develop conformity procedures consistent with the final federal regulations and will submit an appropriate SIP revision. Pages 95 and 96 of the state submittal discuss the general principles to which the state will adhere in developing conformity procedures for the Kansas City area.

On June 7, 1991, EPA and the Department of Transportation issued Interim Conformity Guidance for completing conformity determinations until the final conformity regulations are promulgated. MARC (the metropolitan planning organization for the Kansas City area) completed a conformity determination for Kansas City regional transportation plans and programs under the Interim Guidance, which the state has reviewed and approved. The conformity determination is included as appendix L to the state submittal.

EPA believes that the section 176 conformity requirement is sufficiently met because the promulgation date for conformity procedures has not passed and the state has committed to adopt appropriate procedures.

IV. Conclusion

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address above.

Proposed Action

In today's notice, EPA proposes to approve the Kansas City ozone maintenance plan, and the RACT rule submittals, because it meets the requirements of section 175A. In addition, the Agency is proposing approval of the redesignation request for the Kansas City area, subject to final

approval of the maintenance plan, because the state has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), EPA certifies that this SIP revision and redesignation will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 3, 1992.

Morris Kay,

Regional Administrator.

[FR Doc. 92–1068 Filed 1–14–92; 8:45 am]

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40 CFR Parts 52 and 81

[K51–1–5370; FRL–4093–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Ambient air quality data for the period 1989 through 1991 indicate that the Kansas City ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone. Therefore, in accordance with the Clean Air Act Amendments (CAAA) of 1990, the state of Kansas has submitted an ozone maintenance plan which projects continued attainment of the ozone standard in the Kansas City area, and has requested redesignation of the area to attainment for the ozone NAAQS. EPA is proposing to approve the Kansas City ozone maintenance plan as a revision to the Air Pollution Control State Implementation Plan (SIP) for the state of Kansas. In conjunction with the maintenance plan, EPA is also proposing to approve Kansas' request to redesignate the Kansas City area to attainment with respect to the ozone NAAQS. In a separate **Federal Register** notice published today, EPA is also proposing to approve an analogous plan and redesignation request submitted by the Missouri Department of Natural Resources to address the Missouri portion of the ozone nonattainment area.

DATES: Comments must be received by February 14, 1992.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document (TSD) are available for public review at the above address and at the Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 551–7020 (FTS 276–7020.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1977 ("the 1977 Act") required areas failing to meet the ozone NAAQS to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard (section 172(a)). The Kansas City metropolitan area (KCMA) was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on March 3, 1978. (The designations for Kansas are codified at 40 CFR 81.317.) The Kansas Department of Health and Environment (KDHE) submitted a Part D ozone SIP on September 17, 1979, which EPA fully approved as meeting the requirements of section 110 and Part D of the 1977 Act. The 1979 SIP projected attainment by December 31, 1982, making the KCMA area a "nonextension area" under section 172 of the 1977 Act. Although the KCMA appeared to have met the ozone standard by the end of 1982, additional violations occurred in 1983 and 1984. On February 20, 1985, EPA notified the Governor of Kansas, pursuant to section 110(a)(2)(H), that the SIP was substantially inadequate to attain the ozone NAAQS (50 FR 26198).

In response to the SIP call, KDHE submitted a revised SIP on July 2, 1986, which demonstrated attainment by December 31, 1987. EPA fully approved the revised SIP on May 18, 1988 (53 FR 17700). At that time, EPA believed that the area has achieved the standard as the 1985 through 1987 air quality data showed attainment. However, ozone violations occurred in June of 1988. More recently, however, the 1989 through 1991 air quality data show attainment of the ozone NAAQS. In an effort to comply with the 1990 CAAA (Pub. L. 101–549), and to ensure continued attainment of the standard with an adequate margin of safety, the state submitted an ozone maintenance SIP for the Kansas City area on October 23, 1991. Accompanying the maintenance SIP are new rules to control certain categories of sources which emit volatile organic compound (VOC) emissions, and the state's request to redesignate the area to attainment with respect to the ozone NAAQS.

II. Evaluation Criteria

Together, the Kansas and Missouri submittals meet all the applicable requirements of the 1990 CAA. The EPA rulemaking docket checklist (included with EPA's TSD) provides a listing of applicable approval criteria. However, some of these criteria merit additional discussion which is contained below.

With its submittal of two additional new VOC rules, Kansas meets the CAA requirement that the SIP include all reasonably available control measures (RACM) (section 172(c)(1)). The rules are also consistent with EPA policy as outlined in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to appendix D of November 24, 1987 **Federal Register**," dated May 25, 1988 (referred to hereafter as the "Blue Book").

The Kansas submittal also includes a redesignation request, in which the state demonstrates that the area has fulfilled the redesignation requirements of the amended Act. Section 107(d)(3)(E) of the Act provides specific requirements for redesignating a nonattainment area to attainment.

A. the area must have attained the applicable NAAQS (section 107(d)(3)(E)(i));

B. the area has a fully approved SIP under section 110(k) of the Act (section 107(d)(3)(E)(ii));

C. the air quality improvement must be permanent and enforceable (section 107(d)(3)(E)(iii));

D. the area must have a fully approved maintenance plan pursuant to section 175A of the Act (section 107(d)(3)(E)(iv)); and

E. the area has met all relevant requirements under section 110 and Part D of the Act (section 107(d)(3)(E)(v)).

Section 175A of the Act sets forth the maintenance plan requirement for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment

of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures adequate to assure prompt correction of the air quality problem.

III. Review of State Submittal

A. Maintenance Plan

1. Air Quality Data

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request. (The redesignation request is discussed in Section III.C of this notice.) Ambient ozone monitoring data for 1989 through 1991 show attainment of the NAAQS in the Kansas City area, i.e., less than one expected exceedance per year. For a complete discussion of the NAAQS, the reader is referred to 40 CFR 50.9 and appendix H to that section. Although the 1991 data are not yet fully quality assured, EPA will review the quality of these data in conjunction with its final action on this SIP submittal. EPA will not take final action approving the redesignation unless it determines that attainment is based on three years of quality assured data.

Prior to the 1991 ozone season, the state had planned to base the redesignation request on the 1987 through 1989 air quality data; however, these data did not indicate attainment in strict accord with EPA's interpretation of the ozone standard. Although, under appendix H, attainment cannot be shown by the 1987 through 1989 data, the state's demonstration justifies the use of 1989 emissions levels as being representative of attainment.

2. Emissions Inventory

KDHE submitted comprehensive inventories of actual VOC emissions from point, area, and mobile sources. Because 1989 emission data were not consistently available for all VOC sources in the KCMA, 1988 was selected as the base year and was used to project emissions to 1989 and future years. The 1989 VOC inventory is considered most representative of attainment conditions because: (1) No ozone exceedances occurred in 1989; and (2) EPA's Phase I gasoline volatility controls (54 FR 11868) were implemented in 1989, resulting in significant VOC emission reductions.

Therefore, the attainment emission inventory for purposes of this SIP is based upon the 1989 emission values. All VOC emission estimates were reported in kilograms per typical summer day. The state submittal contains the detailed inventory data and summaries by county and source category.

The state demonstrated that point source VOC emissions were not artificially low due to local economic downturn. The state examined historical employment data for the Kansas City area for the years 1987 through 1989. No economic downturn was evident; employment in the manufacturing sector remained relatively stable during the period.

The state's inventory methodology was consistent with EPA guidance applicable at the time the plan was being developed (EPA–450/4–88–19, December 1988). Eighty percent rule effectiveness was applied for source categories subject to state regulations. Stationary sources with emissions greater than 10 tons per year were inventoried as point sources.

Mobile source emission estimates were generated using EPA's MOBILE4 model. For the 1988 base year (prior to EPA volatility restrictions), a 10.5 psi RVP gasoline volatility was used. In accord with the EPA Phase I volatility restrictions, a 9.5 psi RVP gasoline volatility was input for 1989. For 1990 and 1991, a gasoline volatility of 9.0 psi RVP was used in accord with the KCMA's voluntary RVP reduction program (discussed further below). In accord with EPA's original June 11, 1990, Phase II volatility restrictions (56 FR 23658), a gasoline volatility of 7.8 psi RVP was assumed for 1992 and later years.

Due to the marginal, but persistent, history of ozone nonattainment in the KCMA, EPA and the states of Missouri and Kansas believed that an additional areawide VOC control measure was necessary to ensure that the ozone standard could be maintained with an adequate margin of safety. The states of Missouri and Kansas, the Mid-America Regional Council (MARC) and the Chamber of Commerce worked cooperatively to implement a voluntary program to control the volatility of gasoline supplied to the area for 1990 and 1991. Despite its voluntary nature, the program reduced gasoline volatility from 9.5 to 9.0 psi RVP from June 1 through September 1 in both 1990 and 1991. All petroleum refiners and pipeline companies agreed to participate. Also, the Field Operations Support Division of EPA performed volatility tests of gasoline samples from the KCMA. The tests confirmed that the program achieved its goal. (As discussed in Section III.A.3. below, additional reduction of gasoline volatility will be accomplished, beginning in 1992, as a result of EPA's Phase II volatility standards.)

The voluntary RVP control program resulted in a 8,189 kg/day areawide reduction in the projected 1990 VOC inventory. This equates to a 3.3 percent reduction from the 1989 attainment VOC inventory. Thus, the 8,189 kg/day VOC reduction serves as the attainment margin of safety. The states have committed to maintain future VOC emissions at or below the so-called "action level," i.e., VOC emissions will not be allowed to encroach upon the margin of safety. The action level concept is detailed in the above-mentioned EPA TSD.

3. Demonstration of Continued Attainment

a. State demonstration. The state's demonstration of continued attainment relies, in part, on EPA's Phase II gasoline volatility requirements. On June 11, 1990 (55 FR 23658), EPA promulgated state-by-state Phase II RVP gasoline standards in order to continue reductions in VOC emissions. Accordingly, under the Phase II program, a fuel volatility limit of 7.8 psi RVP was scheduled to become effective in 1992 and each year thereafter during the ozone season (May through September) in the state of Kansas.

However, the federal gasoline volatility requirements were modified by the 1990 CAAA, and EPA promulgated revised Phase II gasoline volatility requirements on December 12, 1991 (56 FR 64704). This latest rule revises the maximum allowable RVP from 7.8 to 9.0 psi in those areas which are currently designated as unclassifiable or in attainment with the NAAQS for ozone. However, as applicable to the KCMA, the RVP limit of 7.8 will go into effect as the area is presently designated nonattainment.

The Kansas portion of the KCMA was designated as nonattainment for ozone in the recently published part 81 Federal Register notice, November 6, 1991 (56 FR 56788). Therefore, continuation of the 7.8 psi RVP limit is federally enforceable in the KCMA, even after the area is redesignated to attainment, because of its nonattainment designation in the November 6, 1991 Federal Register notice. Also, the requirement for 7.8 psi RVP volatility is deemed necessary to ensure attainment and maintenance of the ozone standard as demonstrated by the mobile source emissions inventory projections (based on use of 7.8 psi RVP)

in Kansas' ozone maintenance plan for the KCMA.

Areawide VOC emission were projected for the ten-year period following maintenance plan development. The projections show that the ozone standard will be maintained, i.e., VOC emissions are not expected to exceed the "action level" during this time period. Areawide VOC emissions are expected to decrease by over 20 percent during the next ten years.

The state's projection of VOC emissions is based on the Federal Motor Vehicle Control Program and EPA's Phase II volatility controls. The projections were developed prior to passage of the 1990 CAA Amendments; thus, the federal on-board vapor recovery requirement and the new federal tailpipe standards were not considered.

b. *Additional EPA analysis.* At the time Missouri and Kansas developed their maintenance plans, the current version of EPA's mobile source emissions model was MOBILE4.0. Since that time, MOBILE4.1 has become available. MOBILE4.1 was run to determine what effect, if any, the new model would have on the demonstration of continued attainment of the ozone standard. For any given year, MOBILE4.1 predicted lower VOC emissions than MOBILE4.0; however, the relative year-to-year trends were essentially identical. Thus, the net effect of MOBILE4.1 on the demonstration of continued attainment was not significant.

Using MOBILE4.1, the KCMA attainment level of VOC emissions changed from 245,060 kg/day to 227,007 kg/day. For this analysis, EPA determined the action level of VOC emissions to be 218,009 kg/day. Using MOBILE4.1 for projecting the mobile source component of the emissions inventory, the total KCMA VOC emissions in the year 2000 are projected to be 183,601 kg/day, which is 16 percent below the action level. Given this substantial margin (34,408 kg/day), EPA believes that VOC emissions will remain below the action level through the year 2002 (ten years after the redesignation becomes effective).

EPA also performed an analysis of projected NO_x emissions for the KCMA. Given that VOC emissions will remain below the action level (as discussed above in Section III.A.2.) for the next ten years, EPA wished to determine what increases to NO_x emissions, if any, could be anticipated. Even with no growth in VOC emissions, an increase in NO_x emissions (and the associated changes in atmospheric chemistry) could result in violations of the ozone standard in the KCMA. EPA's analysis showed no increase in KCMA NO_x emissions through the year 2005. Therefore, with VOC emissions at, or below, the action level, and with NO_x emissions not increasing, violations of the ozone standard are not anticipated. Pursuant to section 175A(a) of the Act, EPA finds that the maintenance plan demonstrates continued attainment of the ozone standard for the ten-year period following the effective date of the redesignation.

4. Annual Tracking and Inventory Updates

Continued attainment of the ozone NAAQS in the KCMA depends, in part, on the state's efforts toward tracking VOC emissions. The state has committed to completing comprehensive VOC point source inventory updates at least twice in each five-year period following the effective date of the area's redesignation. For years in which no comprehensive update is performed, the state will update the inventory using source permit and shutdown data.

Area and mobile source inventories will be updated at least once every five years to take advantage of new data and estimation procedures, e.g., U.S. Census data, revised EPA mobile source emission models, etc. For years in which no comprehensive area and mobile source inventories are developed, the state will estimate using the most recently available projections from existing area and mobile source inventories.

The state will submit annual progress reports to EPA which will summarize available VOC emissions data. Thus, on an annual basis, EPA and the state can ascertain whether actual VOC emissions area within the attainment inventory.

5. Contingency Plan

The level of VOC emissions in the KCMA will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Although further reductions of VOC emissions are projected to occur over the next ten years, the state has provided contingency measures to be implemented in the event of a future ozone air quality problem.

Two potential scenarios could result in the implementation of contingency measures. The first scenario would be an increase in VOC emissions which exceeds the "action line" level (encroaching into the emission margin of safety), but does not result in ozone violations. The second situation, regardless of the actual VOC emissions, would be violations of the NAAQS. As mentioned above, the state will provide annual progress reports which will evaluate the integrity of the VOC emissions safety margin. Section 5.3 of the state submittal gives the details of the contingency provisions under both scenarios. Contingency measures include: (1) VOC emission offsets for new and modified stationary sources; (2) transportation control measures; (3) Stage II vapor recovery; (4) a vehicle I/M program; (5) VOC controls on minor new sources; and (6) RACT for sources covered by new EPA CTG documents. Contingency controls would require the state's legislative and/or administrative approval before they could be implemented. The contingency measures provided in the state submittal meet the requirements of Section 175A(d) of the Act.

6. Commitment to Submit Subsequent Maintenance Plan Revisions

In accord with section 175A of the Act, the state has committed to submit a revised maintenance SIP eight years after the area is redesignated to attainment.

B. Additional Reasonably Available Control Technology (RACT) Regulations

In accord with section 172(b)(2) of the 1977 Act, the KCMA was required to have SIP rules representing RACT for all VOC source categories covered by Group I, II, and III Control Techniques Guideline (CTG) Documents. RACT rules were also required for all major non-CTG sources.

At the time EPA approved the SIP (53 FR 17700), EPA and the state believed that all the RACM requirements had been met; rules were in place for all applicable CTG and non-CTG source categories. Moreover, the rules had been revised for consistency with EPA's "Blue Book." However, during the maintenance plan development process, EPA learned that the state needed additional RACT regulations to address two unregulated non-CTG major source categories—lithographic printing sources and chemical processing facilities that operate alcohol plants or liquid detergent plants. After proper notice and public hearing by the state, these rules were adopted and became effective on October 7, 1991. All of the state's existing and new VOC RACT rules will remain in effect after the KCMA is redesignated to attainment for the ozone NAAQS. These rule actions are discussed below.

K.A.R. 28–19–76 Lithography Printing Facilities

This non-CTG RACT rule applies to two existing facilities and new facilities that have the potential to emit more than 100 tons per year (TPY) of VOCs from lithographic printing operations. VOCs from heat-set inks and the associated dryers are required to be reduced by 77 percent over pre-RACT levels through the installation of add-on control equipment. Evaporative emissions from cleanup solvents will be reduced by 50 percent, with VOCs from fountain solutions decreasing by 43 percent. The rule was adopted by the KDHE after proper notice and public hearing and became effective on October 7, 1991.

Appendix M of the state submittal contains a demonstration that the rule constitutes RACT. In its RACT determination, the state generally relied upon research conducted by other states that have proposed or adopted similar rules, feedback from local lithographic printers, information provided by printing trade associations and trade publications, and research conducted for EPA's pending publication of a CTG document for lithographic printing (scheduled for release some time in 1992–93).

K.A.R. 28–19–77 Chemical Processing Facilities That Operate Alcohol Plants or Liquid Detergent Plants

This rule applies to chemical processing facilities that operate alcohol or liquid detergent plants which use, produce, or store ethanol or methanol, and have the potential to emit more than 100 TPY VOCs. This rule currently applies to one existing facility. The rule will require installation of control equipment on point sources, the reduction of VOC concentration in process wastewater streams, and the reduction of fugitive emissions. The state estimates that VOCs from the one existing facility will be reduced by 69 percent, for a total reduction of 455 TPY. This rule was adopted by the KDHE after proper notice and public hearing and became effective on October 7, 1991.

Appendix M of the state submittal contains a demonstration that the rule constitutes RACT. In its RACT demonstration the state relied on research and information developed by EPA, other state and local agencies, and a RACT analysis conducted by the existing facility.

The state also revised two existing rules related to the RACT rules. In rule K.A.R. 28–19–61, Definitions, the definitions of several terms were updated. In rule K.A.R. 28–19–66, Testing Procedures, test methods for the RACT rules were updated to be consistent with EPA reference methods. EPA believes the aforementioned rules constitute RACT for all affected sources. Therefore, EPA proposes approval of these rules.

C. Redesignation Request

The Kansas redesignation request for the KCMA meets the five requirements of section 107(d)(3)(E). Following is a brief description of how the state has fulfilled each of these requirements. EPA's TSD contains a more in-depth analysis of the submittal with respect to certain of these criteria.

1. Attainment of the Ozone NAAQS

The KCMA has provisionally met the first statutory criterion of attainment of the ozone NAAQS. EPA's analysis of the ozone air quality data is discussed above in Section III.A.1. EPA will not take final action approving the redesignation unless it determines that attainment is based on three years of quality assured data.

2. Reductions are Permanent and Enforceable

EPA approved the Kansas SIP for the KCMA satisfied that the rules, and therefore the emission reductions achieved as a result of those rules, were enforceable. Since that time, the Agency has remained satisfied with those rules and has not issued a SIP call pursuant to section 110(a)(2)(H), finding them to be inadequate. The emissions inventory, discussed in Section III.A.2. above, is based on reductions achieved through control measures in the SIP; therefore, EPA finds that the emission reductions are permanent and enforceable.

3. A Fully Approved Maintenance Plan

In today's notice, EPA is proposing approval of the state's maintenance plan for the KCMA. As discussed above in Section III.A., EPA finds that the Kansas submittal meets the requirements of section 175A. If EPA determines after notice and comment that it should give final approval to the maintenance plan, the KCMA will have a fully approved maintenance plan in accordance with section 175A. EPA will not redesignate the area to attainment before it gives final approval to the maintenance plan.

4. Fully Approved SIP Meeting the Requirements of Section 110 and Part D

a. *Section 110 requirements.* On May 18, 1988 (53 FR 17700), EPA fully approved the state's SIP for the KCMA as meeting the requirements of section 110(a)(2) of the 1977 Act. The amended Act, however, modifies several of these requirements. Moreover, the amended Act requires that for redesignation a nonattainment area must have a fully approved SIP under section 110(k)—a new provision. EPA addresses the modified portions of section 110(a)(2) below. As discussed in Section III.B above, the state has submitted two new rules for SIP approval. By today's action, EPA proposes approval of these two rules, and the maintenance plan. Contingent upon final approval of the SIP, EPA proposes approval of the Kansas SIP for the KCMA under section 110(k) of the amended Act. EPA will not take final action redesignating the KCMA to attainment until it has issued a final approval of the entire SIP for the KCMA.

Although section 110 was amended by the CAAA, the KCMA SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance—section 110(a)(2)(B); (C); (E) (i) and (ii); (F); (G); (H); (J); (L) and (M)—and, therefore, EPA has determined that the presence of a fully approved SIP indicates that these requirements have been met.

A few of the other requirements deserve a more detailed analysis. First, the section 110(a)(2) requirement that all elements of the SIP are enforceable, is essentially the same as the section 172(c)(6) requirement. As discussed below in relation to the section 172(c)(6) requirement, we have found that the existing SIP contains the necessary enforceable measures. Second, as to section 110(a)(2)(D), which also remains essentially unchanged, it is important to note that the state has provisions adequate to ensure that it is not contributing to nonattainment problems across the state border. These provisions are found in the existing SIP. Third, section 110(a)(2)(E)(iii) establishes a new requirement that the state retain the responsibility for ensuring adequate implementation of the SIP elements. Since the state adopted and submitted the rules, it has retained direct responsibility for ensuring adequate implementation. Fourth, new section 110(a)(2)(I) reinforces the requirement that the state comply with all Part D requirements (discussed further below). Finally, section 110(a)(2)(K) reinforces EPA's authority to require states to do necessary air quality modeling to support SIP demonstrations. Since EPA is approving the demonstration of continued attainment in the maintenance plan, the KCMA has met this requirement for purposes of redesignation to attainment.

b. *Part D requirements.* Before the KCMA may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth requirements applicable to all nonattainment areas regardless of classification. Subpart 2 of Part D establishes requirements for areas classified as marginal or above. For ozone nonattainment areas, classification is based on the design value of the area. Areas that violated the ozone standard during the three-year period (1987 through 1989) but had a design value of less than 0.121 ppm, fell below the classification cutpoint of section 181 and were, therefore, deemed "submarginal" as of the date of enactment of the 1990 Amendments to the Act. On November 6, 1991, the KCMA was classified as submarginal (56 FR 56694). Therefore, in order to be redesignated, the state need only meet the requirements of subpart 1 of Part D. Specifically, the state must meet the requirements set forth in section 172(c) and section 176.

1. Section 172(c) Plan Provisions

Since EPA did not issue a SIP call after the state's 1988 approved submittal, the section 172(c)(1) RACM requirement (which is the same as the requirement in preamended section 172(b) (2) and (3)) was met by EPA's full approval of the SIP under the preamended Act. The SIP provided for attainment by 1987, and the state has actually attained the standard based on the three years of data from 1989 through 1991. Section 172(c)(1) requires the state to adopt and implement RACM as expeditiously as practicable and to provide for the attainment of the NAAQS. At the time EPA approved the KCMA plan, the Agency determined that it was consistent with RACT and RACM requirements of the Act. As discussed previously herein, EPA later determined that additional RACT rules were needed in the KCMA. The additional RACT rules, included in the state submittal, fulfill the RACT and RACM requirements of the Act.

Several section 172(c) requirements lose their continued force once an area has demonstrated attainment and maintenance of the NAAQS. The requirement for reasonable further progress (RFP) only has relevance during the time it takes an area to attain the NAAQS—each year the area must make RFP toward attainment. EPA originally approved the KCMA RFP demonstration under preamended section 172(c)(2) for the period preceding the statutorily approved attainment date. The preamended section 172(b)(3) requirement is essentially the same as the new section 172(c)(2) RFP requirement. Since the KCMA has attained the NAAQS, its SIP has already achieved RFP toward that goal. In addition, because the KCMA has attained the NAAQS and is no longer subject to an RFP requirement, the section 172(c) contingency measures are not applicable. Such contingency measures must take effect if the area fails to meet an RFP milestone or fails to attain the NAAQS; the KCMA no longer has RFP milestones and has already attained the standard. The area, however, is still subject to the section 175A contingency measures.

Similarly, once an area is redesignated to attainment, nonattainment new source review (NSR) requirements are not applicable. The area is then subject to prevention of significant deterioration (PSD) requirements instead of the NSR program. EPA does not believe it appropriate to require the State to adopt a revised NSR program (meeting the requirements of the amended Act) just to qualify for redesignation, since that program will be replaced by the existing Kansas PSD program upon redesignation.

Finally, as discussed in section III.A.2. above, the state submittal includes an emissions inventory. The emissions inventory fulfills the section 172(c) requirement.

2. Conformity

Section 176 of the Act requires states to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations and to submit these procedures as a SIP revision by November 15, 1992. EPA has not promulgated final conformity regulations; however, the state has committed to develop conformity procedures consistent with the final federal regulations and will submit an appropriate SIP revision. Pages 95 and 96 of the state submittal discuss the general principles to which to state will adhere in developing conformity procedures for the Kansas City area.

On June 7, 1991, EPA and the Department of Transportation issued Interim Conformity Guidance for completing conformity determinations until the final conformity regulations are promulgated. The Mid-American Regional Council (the metropolitan planning organization for the Kansas City area) completed a conformity determination for Kansas City regional transportation plans and programs under the Interim Guidance, which the state has reviewed and approved. The conformity determination is included as Appendix L to the state submittal.

EPA believes that the section 176 conformity requirement is sufficiently met because the promulgation date for conformity procedures has not passed and the state has committed to adopt appropriate procedures.

IV. Conclusion

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address above.

Proposed Action

In today's notice, EPA proposes to approve the Kansas City ozone maintenance plan, and the RACT rule submittals, because it meets the requirements of section 175A. In addition, the Agency is proposing approval of the redesignation request for the Kansas City area, subject to final approval of the maintenance plan, because the state has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), EPA certifies that this SIP revision and redesignation will have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 3, 1992.

Morris Kay,

Regional Administrator.

[FR Doc. 92–1069 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Chapter 53 Appendix B

Air Force Systems Command Federal Acquisition Regulation Supplement Clause: Total System Performance Responsibility (TSPR)

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule; withdrawal.

SUMMARY: On March 22, 1991, the Department of the Air Force published (at 56 FR 12145) a proposed rule to amend chapter 53 of title 48 of the Code of Federal Regulations by adding the Air Force Systems Command (AFSC) Federal Acquisition Regulation as appendix B, to include a new AFSC Federal Acquisition Regulation Supplement Part AFSC 5317 and AFSC 5352. After reviewing public comments and considering the opinions of management and staff, it was decided not to finalize the proposed rule on Total System Performance Responsibility. Therefore the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: David Thomas, HQ AFSC/PKPP, Andrews AFB DC 20332–5000, telephone (301) 981–4022.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–967 Filed 1–14–92; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73–20; Notice 16]

RIN 2127–AD47

Federal Motor Vehicle Safety Standards; Fuel System Integrity; Alcohol Fuels

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 12, 1990, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning possible specialized fuel integrity requirements for vehicles using alcohol fuels. This notice proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 301, Fuel System Integrity, to establish anti-siphoning requirements for alcohol fuel vehicles. This includes dedicated, dual, flexible fuel, and variable fuel vehicles. NHTSA is proposing no further requirements at this time.

DATES: Comment closing date: Comments on this notice must be received on or before March 16, 1992.

Proposed effective date: If adopted, these amendments would be effective September 1, 1993.

ADDRESSES: All comments on this notice should refer to the above docket and notice numbers and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted. The Docket is open from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4804).

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Standard

Federal Motor Vehicle Safety Standard No. 301 specifies requirements for the integrity of motor vehicle fuel systems. The purpose of the standard is to reduce deaths and injuries from fires that result from fuel spillage during and after motor vehicle crashes. The standard applies to certain passenger cars, multipurpose passenger vehicles (MPV's), trucks, and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The standard also applies to certain school buses with a GVWR over 10,000 pounds. (Thus, the standard does not apply to most transit and intercity buses.) The standard applies to these types of vehicles only if they use fuel with a boiling point above 32 degrees Fahrenheit. Such fuels include gasoline, diesel fuel, and the alcohol fuels methanol and ethanol.

Standard No. 301 specifies requirements for the integrity of the entire fuel system. The system includes the fuel tanks, emission controls, lines, and connections. The standard specifies front, rear moving, and lateral moving barrier crash tests. Under the standard, fuel spillage in a fixed or barrier crash test cannot exceed one ounce, by weight, from impact until motion of the vehicle has ceased. Further, spillage cannot exceed five ounces, by weight, in the five minutes following cessation of motion. In rollover tests, fuel spillage from the onset of rotational motion cannot exceed five ounces, by weight, for the first five minutes of testing. For the remaining testing period, fuel spillage cannot exceed one ounce, per weight, during any one-minute interval. The standard also specifies a moving contoured barrier crash test for school buses with a GVWR over 10,000 pounds.

B. Use of Alcohol Fuels

Increasing attention is being given to use of alcohol fuels in motor vehicles to meet environmental and energy security goals. The Department of Energy (DOE) is sponsoring demonstration programs with vehicles fueled with methanol and ethanol. According to DOE, 446 methanol fuel vehicles were in use in ten states in November 1990. About 77 percent of the vehicles were in California. In the same month, 133 ethanol fuel vehicles were in use in three states. About 85 percent of the vehicles were in Iowa. Most of the methanol and ethanol fuel vehicles were buses.

In addition, the General Services Administration purchased 65 methanol fuel vehicles for the Federal government in fiscal year 1990. Further, General Motors, Ford, and Chrysler have produced passenger cars that use alcohol fuels. The cars will be used mainly for research programs and by State and Federal agencies.

The fuel systems of vehicles being introduced today to operate on alcohol fuels (either methanol or ethanol) are similar to those of vehicles operating on conventional fuels (i.e., gasoline or diesel fuel). The method of on-board vehicle storage of alcohol fuels is the same for conventional fuels. Alcohol fuels, like conventional fuels, are liquids at ambient temperature and pressure conditions. Many vehicles introduced to run on methanol or ethanol are capable of using that fuel, a conventional fuel, or any combination of the two. These vehicles have a composition sensor on-board the vehicle to detect the percentage of alcohol in the fuel. This allows parameters (e.g., spark timing and fuel metering) to be automatically adjusted for optimum engine performance. Such vehicles are referred to as flexible-fueled vehicles (FFV's) or variable-fueled vehicles (VFV's). Dual-fuel vehicles can operate on both alcohol or conventional fuel, but not various combinations of the two. Dedicated vehicles can operate on only one fuel or fuel blend. For example, a dedicated fuel vehicle may operate on only neat methanol (100 percent methanol or M100), 85 percent methanol with 15 percent unleaded gasoline

(M85), pure ethanol, or a particular ethanol and gasoline blend.

C. Alternative Motor Fuels Act

Under the Alternative Motor Fuels Act of 1988, DOE is conducting demonstration programs to encourage the use of alternative motor fuels. The alternative fuels include natural gas, methanol, and ethanol. The Urban Mass Transportation Administration (UMTA) of the DOT is also encouraging the use of alternative fuels by local transit authorities.

Additional encouragement is provided by the provisions in the 1988 Act specifying that any new passenger automobile which meets the applicable range requirements as well as the other criteria in the Alternative Motor Fuels Act qualifies to have its fuel economy calculated according to a special procedure. Under this procedure, a relatively high fuel economy figure is assigned the vehicle. This encourages the production of dual energy passenger automobiles by facilitating a manufacturer's compliance with applicable Corporate Average Fuel Economy requirements.

Pursuant to those provisions, NHTSA published a final rule establishing minimum driving range requirements for dual energy passenger automobiles (April 26, 1990; 55 FR 17611). (Dual energy passenger automobiles are those capable of operating on an alternative fuel as well as gasoline or diesel fuel.) The NHTSA rule establishes a minimum driving range of 200 miles for dual energy passenger automobiles operating on alcohol as well as petroleum fuel. The rule establishes a minimum driving range of 100 miles for dual energy passenger automobiles operating on natural gas as well as petroleum fuel.

D. Advance Notice of Proposed Rulemaking

On October 5, 1990, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the fuel system integrity of vehicles using methanol or ethanol (55 FR 41556). NHTSA requested comments on whether Standard No. 301 should be amended to set specialized requirements for vehicles using methanol or ethanol fuels. While vehicles using such fuels are covered by Standard No. 301, the current standard does not address properties of alcohol fuels which are different from those of gasoline or diesel fuel.

In the ANPRM, NHTSA requested comments on whether specialized requirements should be developed for alcohol fuels based on five differences between those fuels and gasoline or diesel fuel. The areas addressed in the ANPRM were (1) the acute toxicity of alcohol fuels when ingested or absorbed through the skin, (2) the differences in the flammability and explosive characteristics of alcohol fuels, (3) the flame luminosity of alcohol fuels, (4) the energy potential of alcohol fuels, and (5) the corrosiveness of alcohol fuels. NHTSA received 19 comments on the ANPRM from a variety of groups.

II. Brief Summary of Proposed Rule

After considering the comments on the ANPRM, NHTSA has decided to propose a rule to address the acute toxicity of alcohol fuels. NHTSA is proposing to address this potential problem by establishing anti-siphoning requirements for vehicles manufactured to operate on alcohol fuels or alcohol fuel blends. This includes dedicated, dual, flexible fuel, and variable fuel vehicles. The proposed rule would cover both methanol and ethanol fuels or fuel blends.

In this proposed rule, NHTSA would cover only vehicles produced to operate on fuel blends with at least 20 percent alcohol fuel content. Thus, the proposed rule would not cover vehicles produced to operate on gasohol, which may contain about 10 percent ethanol, or oxygenated gasoline, which may contain small amounts of ethanol. NHTSA discusses the proposed rule in more detail below.

NHTSA believes that this proposed rule is consistent with the provisions in the Clean Air Act Amendments of 1990. Section 247(e) of the Clean Air Act states that DOT "shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles." In addition, section 250 of the Clean Air Act states that DOT "shall, in accordance with the [National Traffic and Motor Vehicle Safety Act of 1966], promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles."

III. Discussion of Comments and the Agency Response

Below, NHTSA summarizes the comments on the ANPRM and discusses in more detail the agency response to those comments for each of the five areas addressed in the ANPRM.

A. Acute Toxicity of Alcohol Fuels

The acute toxicity of alcohol fuels when ingested is a concern. The concern is primarily for methanol. Ingestion is the quickest route of methanol poisoning. The usual fatal dose by ingestion of methanol in an adult is between 50 and 100 milliliters (ml) (2 to 4 ounces). As little as 25 to 50 ml (1 to 2 ounces or 5 teaspoonfuls) has been fatal. Less than 12 ml (1 tablespoonful) of M85 in a one-year-old child is a potentially lethal methanol dose. The usual adult fatal dose of ethanol by ingestion ranges from 240 to 300 ml. The usual adult fatal dose of gasoline by ingestion ranges from 115 to 470 ml. Methanol can also cause blindness when ingested.

Methanol has other properties that increase NHTSA's concern about the risk of methanol poisoning. Methanol does not have a taste, color, or odor that would identify it as methanol. Thus, methanol can be mistaken for water or alcoholic beverages. There are recognizable symptoms of methanol poisoning. These include visual disturbances, abdominal pain, nausea, vomiting, weakness, and dizziness. However, the onset of symptoms is generally between 12 to 24 hours, and sometimes up to a few days, after ingestion of the methanol.

There have been no reported cases of M85 or M100 ingestion in connection with use of these fuels as part of the demonstration programs discussed above. Commenters such as General Motors (GM), Ford, Chrysler, Crown Coach, Inc., and the National Truck Equipment Association (NTEA), stated that they knew of no toxicity incidents in demonstration or test vehicles. However, the American Association of Poison Control Centers (AAPCC) has estimated that there might be up to 195 additional fatalities due to ingestion of motor fuels yearly if methanol were to replace gasoline. This includes ingestion during siphoning from a vehicle and ingestion of fuel in containers by children. The AAPCC has also estimated that there would be a corresponding increase in the number of serious injuries. However, NHTSA believes that the AAPCC estimate may be high. The AAPCC data were not adjusted for the fact that methanol used for automobiles and trucks would probably not be left around a house or garage in fuel cans. This is because methanol is likely to be used in fewer devices used in or around residences than gasoline. Thus, it is less likely that children would be exposed to methanol in containers as they are for gasoline in containers. NHTSA believes that it is also less likely that children would siphon methanol from vehicles than it is that they would siphon gasoline. This is because the children would have less use for the methanol since it would have

fewer uses in or around a residence. If the data are adjusted to account for these facts, NHTSA estimates that the replacement of gasoline with methanol could result in an increase of about 23 to 35 fatalities annually due to siphoning methanol fuel from vehicles. A partial replacement of gasoline with methanol would result in a lesser increase in fatalities.

To address the above concerns, a number of commenters, such as the Insurance Institute for Highway Safety (IIHS), Chrysler, Navistar, and Nissan, stated that requirements for anti-siphoning devices might be appropriate. According to Navistar, such a device could be designed as a screen which could also serve as a flame arrester when installed in the fuel tank inlet. Snyder Tank Corporation, a fuel tank manufacturer, also supported anti-siphoning devices. Ford stated that all alcohol fuel systems should be designed to guard against siphoning. Ford stated that it currently plans to design its alcohol fueled vehicles to guard against siphoning, even without regulatory requirements. Ford stated that it may be possible to design a single device that has anti-siphoning and anti-spitback functions and serves as a flame arrester. Ford also stated that manufacturers should be allowed design flexibility. Ford pointed out that anti-siphoning devices could slow the fuel fill rate of a vehicle and make draining of the fuel tank prior to removal more difficult. GM stated that its variable fuel (methanol-gasoline) demonstration cars have an anti-siphoning filler design. The GM vehicles also have methanol handling caution labels on the vehicle and information in the owner's manual supplement.

After considering the comments, NHTSA is proposing an amendment to Standard No. 301 to establish new anti-siphoning requirements to address the acute toxicity of alcohol fuels. The proposed rule would apply to vehicles manufactured to operate on alcohol fuels or alcohol fuel blends. This includes dedicated, dual, flexible fuel, and variable fuel vehicles. The coverage would be limited to the types of vehicles currently covered by Standard No. 301. This includes passenger cars, MPV's trucks, and buses (including school buses) with a GVWR of 10,000 pounds or less and school buses with a GVWR over 10,000 pounds. Most transit and intercity buses, which are predominately centrally fueled, would not be covered by the proposal. The proposed rule would cover both methanol and ethanol fuels or fuel blends.

In this proposed rule, NHTSA would cover only vehicles produced to operate on fuel blends with at least 20 percent alcohol fuel content. Thus, the proposed rule would not cover vehicles produced to operate on gasohol, which may contain about 10 percent ethanol, or oxygenated gasoline, which may contain small amounts of ethanol. NHTSA has tentatively concluded that fuels with less than 20 percent methanol content are unlikely to result in fatalities to persons during siphoning. One mouthful (roughly 3.4 ounces) of 20 percent methanol and 80 percent gasoline content fuel is a potentially fatal dose. NHTSA believes that a person is unlikely to swallow and lingest more than a mouthful of fuel during siphoning. However, NHTSA requests comment on the appropriate level of alcohol content for coverage under the anti-siphoning requirements. Does another level of alcohol content in alcohol/gasoline blends better reflect levels of acute toxicity that present significant concern?

Since methanol is more acutely toxic than ethanol, NHTSA is also requesting comment on whether the requirements should apply only to vehicles fueled by methanol or a fuel blend containing methanol. In addition, NHTSA is requesting comment on whether the proposed requirements should cover other fuels, such as gasoline and diesel fuel.

The proposed rule would require that the fuel tank fill system performance on vehicles be such that a hose with a length of at least 120 centimeters (cm) and an outside diameter of 3.2 millimeters (mm) or more would not contact liquid fuel when the hose is inserted into the fuel tank filled to 90 to 95 percent of capacity. NHTSA believes that a hose with an outside diameter of 3.2 mm (⅛ inch) is the smallest commercially available hose that would likely be used for siphoning. The agency believes that 120 cm (i.e., about 4 feet) is the maximum distance between the filler neck opening and the area where liquid fuel is stored in the vehicles covered by this proposed rule. NHTSA recognizes that the actual distance will vary depending on the size of the vehicle and the configuration of its fuel filler/storage system. NHTSA requests comment on whether another hose diameter or length should be specified.

NHTSA is proposing that the hose used in the test procedure proposed in this notice be made of vinyl plastic or rubber material. NHTSA believes that hoses commonly used in siphoning are often made of such material. In this proposed rule, NHTSA is not specifying a particular degree of rigidity for the hose. The wording of the proposed regulatory text makes clear that the hose must be rigid enough to be inserted into the fuel tank fill system (i.e., the filler neck). However, NHTSA requests comment on whether the agency should specify a particular degree or rigidity for the hose and, if so, what degree of rigidity should be specified. NHTSA is also not specifying that a particular degree of force be used during the proposed test procedure. However, NHTSA requests comment on whether the agency should specify a particular among of force and, if so, what the amount of force that should be specified and how that force should be measured.

If this proposed rule is adopted by the agency, NHTSA expects that manufacturers could install a screen in the fuel tank filler neck to prevent a siphoning hose from being inserted in the fuel tank.

NHTSA recognizes that on January 19, 1990, the Environmental Protection Agency (EPA) published a proposal seeking to reduce evaporative emissions through anti-spitback performance requirements for refueling station pumps dispensing gasoline and methanol (55 FR 1914). This proposal was issued because fuel spitback can be a problem for some fill neck designs when fuel fill rates are too high. EPA held a public hearing in March 1990 in conjunction with this rulemaking, and as a result of comments at that hearing, is also considering anti-spitback performance requirements for the vehicle itself. NHTSA understands that at least one of the types of hardware technology which would provide anti-spitback performance on vehicles may have the potential to also prevent siphoning. Nonetheless, based on conversations with EPA, NHTSA has concluded that its anti-siphoning rulemaking should proceed, since there is no assurance that the EPA final rule would require vehicle changes, or, if it did, cause vehicle manufacturers to select hardware that would not only eliminate spitback, but also have the added benefit of decreasing the likelihood of siphoning. If, however, an EPA final rule concerning vehicle spitback performance is promulgated, and such a rule requires manufacturers to select hardware that would also preclude or reduce siphoning, then NHTSA would consider terminating this rulemaking.

NHTSA also recognizes that an anti-siphoning device could slow the fuel fill rate of a vehicle and make draining of the fuel tank prior to removal more difficult. NHTSA requests comments on possible environmental and other consequences of a slower fill rate.

NHTSA also requests comment on the impact of a more-difficult-to-drain fuel tank on the repair of motor vehicles and the recycling of motor vehicle parts. NHTSA tentatively concludes that these potentially negative impacts are justified in view of the deaths and injuries that would be avoided by an anti-siphoning device. However, NHTSA requests comment on this point.

NHTSA also requests comment on whether the requirements proposed in this notice should apply to all vehicle types currently subject to Standard No. 301 that are produced to operate on fuel blends with at least 20 percent alcohol fuel content. Should some vehicles be excluded from coverage entirely or should some vehicle types be subject to different requirements?

NHTSA believes that manufacturers of vehicles produced to operate on fuel blends with at least 20 percent alcohol fuel content will include that information in their owner's manual and perhaps in a label near the fuel tank filler neck. NHTSA would need such information for compliance testing of vehicles subject to any final rule. NHTSA requests information from manufacturers on their plans to make persons aware of the fuel capabilities of their vehicles. If manufacturers do not plan to include such information in their owner's manuals or in a label on the vehicle, NHTSA may have to include requirements in the final rule sufficient for the agency to conduct compliance testing. NHTSA requests comment on whether such requirements are necessary.

NHTSA also requests comment on any issues concerning compliance by manufacturers of multi-stage vehicles with the proposed requirements. NHTSA tentatively concludes that the impacts on manufacturers of multi-stage vehicles would not be significantly different from those on manufacturers of other vehicles. NHTSA notes that Standard No. 301 currently applies to multi-stage vehicles and does not believe that the additional requirements proposed in this rule would significantly increase the impact on manufacturers of multi-stage vehicles.

B. Explosive Characteristics of Alcohol Fuels

There are differences in the flammability and ignition characteristics between alcohol fuels and gasoline. In open air situations, methanol (M100) is less likely to ignite than gasoline. This is because methanol's vapor is produced at a slower rate and disperses more rapidly than that of gasoline. M100 also has a lower vapor density than gasoline. High density vapors settle into low areas or follow the ground and may flow to an ignition source. High density gasoline flows are a major reason for ignition of fire following a crash. Unlike gasoline, M100 diffuses rapidly in open air and is less likely to accumulate. This limits the possibility of flammability. NHTSA believes that M85 is likely to act similar to gasoline in open air situations.

In enclosed spaces like a fuel tank, gasoline is virtually incombustible. NHTSA believes that M85 would act much like gasoline in enclosed spaces. However, M100 is more likely to ignite in an enclosed space. This is because methanol's volatility and flammability limits allow a combustible mixture to exist in the fuel tank between approximately 45 and 108 degrees Fahrenheit. Ethanol fuel is flammable inside a fuel tank between approximately 5 and 108 degrees Fahrenheit.

There are also differences in fire severity between alcohol fuels and gasoline and diesel fuels. Once ignition occurs, gasoline and diesel fuel fires are violent and severe. The heat releases rates of gasoline and diesel fuel are also relatively high. By contrast, M100 burns at a slower rate and in a much more controlled manner. Its heat release rate is about one eighth that of gasoline. NHTSA believes that the fire severity of M85 is between that of M100 and gasoline. The volatility of M85 is high enough to cause a fire to develop fully, immediately following ignition. However, its other properties would tend to limit the severity to which it burns.

In the ANPRM, NHTSA requested information concerning the flammability of alcohol fuels from the users of alcohol-fueled vehicles. GM, Ford, Chrysler, and Volvo reported no incidents relating to in-tank methanol fuel flammability. GM also stated that GM do Brazil has reported no significant safety problems with ethanol-fueled vehicles produced in Brazil since 1980.

In the ANPRM, NHTSA also asked whether a specific level of vehicle fuel tank flame arrester performance should be required. Such a requirement would be in response to the increased flammability of alcohol fuels in confined spaces. GM, Ford, and Chrysler stated that a requirement for a flame arrester was not necessary. Ford stated that fuel flame arresters do not appear necessary because of projections that methanol-fueled vehicles will result in proportionally fewer crash-related fires than are experienced with gasoline-fueled vehicles. GM did not believe that the flammability of methanol in fuel tanks was likely. GM stated that several conditions must exist simultaneously to achieve combustion. First, a combustible vapor must exist in the fuel tank. This depends on the interaction between temperature, fuel blend, fuel vapor pressure, and the level of fuel in the tank. Second, a source of sufficient energy to burn the combustible vapor must be present. Third, there must be a vapor path to the source. Fourth, there must be efficient energy transfer to the unburned mixture.

In contrast, Navistar stated that flame arresters should be required on the fuel tank venting system and the fuel tank inlet. IIHS stated that NHTSA should adopt performance requirements to ensure that no ignition occurs at any situation where an external ignition source is near a fuel filler neck, the fuel tank vents, or a partially filled fuel tank. IIHS stated that current technology, such as flame arresters and extended filler necks, would minimize the danger of fuel tank explosion.

In comments on the ANPRM, GM stated that it has incorporated flame arresters in the fuel tank fill tube and vent line of its variable fuel demonstration cars. According to GM, the flame arresters prevent external flame from propagating into the fuel tank and provide a large, cool surface to quench the flame front.

GM also stated that other devices, such as bladder-type fuel tanks and fuel tank foam fillers, are not now feasible for use in production vehicles. Similarly, Ford stated that a bladder in fuel tanks was impractical. Ford stated that this was because of package constraints of filler necks, servicing concerns, and interference with fuel level sensing devices.

After considering the comments on the ANPRM and other information, NHTSA has concluded that flame arrester technology is still in the developmental stage. Flame arresters are generally commercially available only for stationary tanks or large tanks used on locomotives. NHTSA has further concluded that more research is needed before the agency proposes a rule concerning the use of flame arresters in vehicles fueled by alcohol. The necessary research concerns the fuel combustion properties of alcohol fuels and alcohol fuel blends. Specific conditions inside the fuel tank are necessary for flammability. These conditions include temperature, pressure, alcohol content, and energy content of the ignition source.

In addition, M85, rather than M100, is currently being used in demonstration programs. M85 acts much like gasoline. Therefore, NHTSA concludes that more

research, rather than immediate regulatory action, is appropriate.

C. Flame Luminosity

Some alcohol fuels have different flame luminosity than gasoline. M100 burns with a light blue flame, which is invisible in daylight if no combustibles are present. M85, when burning, is more visible in daylight. Ethanol flames are fairly luminous in daylight.

The lack of flame luminosity could be dangerous in a car crash. Vehicle occupants, rescue personnel, or others could be burned by a source, which at least initially, would not be visible. Because of these concerns, Transport Canada conducted tests on the flame visibility of various fuels that spilled on engine and ground surfaces and ignited. The tests showed that gasoline and low level methanol blends had flames that were more visible and visible earlier than the flames of methanol and high level methanol blends. This differing visibility was found with a ground surface spill on gravel, asphalt, and grass. On grass, the flame visibility of both neat methanol and methanol-rich fuels was enhanced somewhat. The visibility was lowest on the gravel surface.

A number of commenters expressed concern about the lack of luminosity of M100 flames. Commenters stated that the nearly invisible flames could be a safety problem and cause an increase in burn injuries and fatalities. However, commenters noted that the involvement of other combustibles in a fire would produce smoke and aid in flame visibility. Commenters also stated that M85 provides sufficient luminosity during daylight fires. However, commenters indicated that an additive is needed in M100 to increase flame luminosity. Some of the commenters stated that NHTSA should require an additive in M100. Commenters also pointed out that committees of the Society of Automotive Engineers (SAE) and the American Society for Testing and Materials (ASTM) are working to address issues concerning the flame luminosity of methanol.

After considering comments, NHTSA agrees that it is advisable for fuels to have flame luminosity. However, NHTSA has determined that rulemaking in this area is premature. NHTSA believes that it is more appropriate to await the results of ongoing research by government and industry and the recommendations of the SAE and ASTM committees. NHTSA does not believe that there is an immediate need for action since manufacturers are using M85 in their demonstration vehicles. As discussed above, the flame luminosity of M85 is more than that of M100.

D. Energy Potential

The energy content of alcohol fuels is less than the energy content of the same volume of gasoline. Methanol's volumetric energy content is roughly one-half that of gasoline. Ethanol's volumetric energy content is about two-thirds that of gasoline. Thus, fuel tank capacity for neat alcohol fuel vehicles would have to be greater than that for gasoline vehicles to give the same driving range. However, in practice, flexible fuel vehicles that use M85 typically have the standard fuel tank capacity.

In the ANPRM, NHTSA requested comment on whether a possible increase in fuel tank capacity for alcohol fuel vehicles would pose a safety problem. NHTSA also asked whether the size of alcohol fuel tanks are likely to increase in size.

On the latter point, some commenters stated that they did not expect fuel tank size to increase significantly, at least through 1995. Other commenters indicated that any size increase would depend on market demand.

Two commenters addressed the safety implications of larger fuel tanks. NTEA stated that end users of commercial trucks made in multiple stages may install aftermarket tanks outside the frame rails. NTEA stated that this would increase tank exposure to the possibility of damage in a collision. Crown Coach stated that the greatest danger of spills in an accident may occur when the fuel crossover line between two tanks is torn away.

After reviewing the comments in this area, NHTSA has decided not to initiate rulemaking at this time. NHTSA believes that the current Standard No. 301 addresses the potential problem by setting maximum allowable fuel leakage requirements in crash tests.

E. Corrosiveness

Alcohol fuels are more corrosive than gasoline. Alcohol fuels cause more wear on fuel system components than gasoline. The ANPRM requested comment on whether alcohol fuel vehicles should be equipped with fuel tanks, fuel lines, and injector nozzles that are resistant to corrosion. The ANPRM also asked whether other vehicle components that are critical to safety and may be affected by leakage of alcohol fuel should receive protection.

Some commenters stated that there is a potential for misapplication of parts in the aftermarket. These commenters also stated that the vehicle conversion industry did not understand the corrosion potential of alcohol fuels. Other commenters stated that vehicle manufacturers already recognize the need for fuel system compatibility. They asserted that no NHTSA requirement is necessary or appropriate.

After reviewing the comments, NHTSA has concluded that no regulatory action is necessary now. NHTSA believes that the possibility of costly repairs under warranty and product liability concerns should provide sufficient incentive for manufacturers to avoid use of vehicle components that could deteriorate when exposed to alcohol fuels. NHTSA believes that such incentives would also apply to the aftermarket parts and vehicle conversion industries.

IV. Benefits of Proposed Rule

As discussed above, NHTSA estimates that, without anti-siphoning requirements, a complete replacement of gasoline with methanol in motor vehicles would result in between 23 and 35 additional fatalities from siphoning each year; partial replacement of gasoline with methanol would result in a proportionately lesser increase in fatalities. NHTSA believes that an anti-siphoning requirement would prevent 90% of these fatalities (21–32).

NHTSA estimates that a complete replacement of gasoline with methanol in motor vehicles would result in between 2,476 and 3,868 non-fatal methanol ingestion injuries. NHTSA estimates that the health care costs for methanol ingestion are significantly higher than those for gasoline ingestion due to the need for more immediate diagnosis and the possibility of more severe injuries. NHTSA believes that an anti-siphoning requirement would prevent 90% of these injuries (2,228–3,481). The costs of the proposed requirement are discussed below.

V. Costs of Proposed Rule

NHTSA estimates that the proposed rule, if adopted as a final rule, would have relatively small costs. NHTSA believes that manufacturers would use a screen in the fuel-filler neck to meet the proposed requirements. NHTSA estimates that the cost of the screen device would be $0.65 per vehicle. If the entire fleet of 15 million vehicles were fueled by methanol or ethanol, the total cost for equipping the fleet with screens would be about $9.75 million.

NHTSA believes that the weight of the screen would be negligible. Therefore, the proposed requirement would not adversely affect fuel economy.

VI. Leadtime

NHTSA is proposing to make the proposed requirement effective on September 1, 1993. This should provide a leadtime of one year or more after a final rule is issued. NHTSA believes that this proposed leadtime is reasonable. NHTSA believes that it would be relatively simple for manufacturers to make any changes necessary to comply with the proposed requirements. Devices currently used to prevent siphoning are not complicated and are already being used by Ford and GM in at least some demonstration vehicles.

VII. Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposed rule and determined that it is not "major" within the meaning of Executive Order 12291. However, NHTSA has determined that the proposed rule is "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the significant public and Congressional interest in the rulemaking. NHTSA has estimated the costs of the proposed amendments to Standard No. 301 in a Preliminary Regulatory Evaluation which is included in the docket for this rulemaking. As discussed above, NHTSA estimates that the proposed requirements, if adopted in a final rule, would cost approximately $0.65 per vehicle. The maximum total cost, assuming that the entire fleet is made up of alcohol fuel vehicles, would be about $9.75 million per year.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The effect of this proposal, if adopted, on any small manufacturers of vehicles would be minor. As discussed above, NHTSA believes that manufacturers could comply with the proposed requirements by installing a screen device, which NHTSA estimates would cost $0.65 per vehicle. Therefore, the proposed amendments would not have any significant effect on the price of those vehicles. Since the purchase price would be negligibly affected, there would not be any significant effect on small entities which purchase the vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rule would have no Federalism implication that warrants the preparation of a Federalism report.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed rule. The agency has determined that this proposed rule, if adopted as a final rule, would not have a significant impact on the quality of the human environment. As discussed above, NHTSA does not believe that the proposed rule would have any significant impact on fuel economy.

VIII. Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 533.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket at the above address. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and NHTSA recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.301 [Amended]

2. In 571.301, section S2 would be revised to read as follows:

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes, and resulting from ingestion of fuels during siphoning.

3. In 571.301, a new section S5.7 would be added to read as follows:

5.7. *Alcohol fuel vehicles.* Each vehicle manufactured to operate on an alcohol fuel (i.e., methanol or ethanol) or a fuel blend containing at least 20 percent alcohol fuel shall meet the requirements of S6.6.

4. In 571.301, a new section S6.6 would be added to read as follows:

S6.6. *Antisiphoning test for alcohol fuel vehicles.* Each vehicle shall have means that prevents a hose, made of vinyl plastic or rubber, with a length of at least 120 centimeters (cm) and a minimum outside diameter of 3.2 millimeters (mm), from contacting liquid fuel in the vehicle's fuel tank, when the hose is inserted into the fuel tank fill system (i.e., the filler neck), with the fuel tank filled to any level from 90 to 95 percent of capacity.

5. In 571.301, section S7 would be revised to read as follows:

7. *General test conditions.* The requirements of S5.1 through S5.6 and S6.1 and S6.5 shall be met under the following conditions. Where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

Issued on January 9, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-1008 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 88-06, Notice 14]

RIN 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Federal Motor Vehicle Safety Standard No. 214, Side Door Strength, to clarify how the quasi-static door strength test procedure is to be conducted in the case of several types of vehicles. Recently, NHTSA extended the quasi-static test requirements of Standard No. 214, which formerly applied to cars only, to trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less. During that rulemaking, several issues were raised concerning the application of the current test procedure to certain types of vehicles. This document solicits comments on a proposal to amend Standard No. 214 to resolve these issues. The proposal addresses the positioning of the loading cylinder in testing four different types of doors: (1) A door whose lower edge is not at all points parallel to the sill; (2) a door whose lower or rear edge has molding; (3) double cargo doors; (4) a door which does not have a window.

DATES: Comments must be received on or before March 16, 1992. The amendments to Sections S2.1 and S4 proposed in this document would become effective September 1, 1993.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-2264.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 214, Side Impact Protection, specifies side door strength requirements to minimize occupant injuries that occur as a result of a vehicle's side structure being pushed into the passenger compartment during side impact crashes. Standard No. 214 requires each door to resist crush forces that are applied inward against the door's outside surface in a laboratory test. The forces are applied by means of a piston pressing a vertical steel cylinder (or semi-cylinder) against the middle of the door. The standard specifies aligning the longitudinal axis of the cylinder with the midpoint of a horizontal line drawn across the span of the door, five inches above the lowest point of the door. The bottom of the cylinder must be aligned with the line drawn five inches above the door's lowest point, and the top of the cylinder must extend above the bottom edge of the window opening by at least 0.5 inches. Thus, according to these specifications, the loading cylinder is positioned in the center of the door panel for purposes of the quasi-static test.

Standard No. 214 currently specifies locating the cylinder in the center of the door panel for two reasons. First, the center of the door panel is the weakest region, where the greatest intrusion into the passenger compartment is likely to occur. The standard seeks to specify an adequate level of crush strength and associated low intrusion at the door's midpoint so that, if an impact occurs elsewhere on the door panel, the door's strength will be at least as great in that location. Second, the standard specifies positioning the cylinder in the middle of the door panel to ensure that the test will evaluate only the crush characteristics of the door panel, without any interference from the door frame, or the sill and floor structures of the vehicle.

To meet the door strength requirements of Standard No. 214, manufacturers generally reinforce the vehicle's side doors with horizontal metal beams. The door beams are designed to transmit forces through the door's hinges and lock mechanism to the pillar structures, located fore and aft of each door in most body styles and vehicle types.

Rulemaking History

In 1989, NHTSA published a notice of proposed rulemaking (NPRM) to extend the quasi-static test requirements for side door strength from passenger cars to trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less (hereafter referred to as "LTVs"). (54 FR 52826, December 22, 1989.) After considering the comments on the NPRM and other available information, NHTSA decided to extend the quasi-static test requirements to LTVs with a GVWR of 10,000 pounds or less, except for walk-in vans. (56 FR 27427, June 14, 1991.) The final rule becomes applicable to the covered LTVs on September 1, 1993 and specifies the same test procedure for LTV side door strength that applies to passenger cars.

During the rulemaking process, several commenters raised questions regarding the application of the test procedure to certain types of LTV side doors. Additionally, some manufacturers have recently raised questions about the application of the test procedure to certain types of passenger car side doors.

This notice proposes to address these concerns by amending Standard No. 214 to ensure that the door strength test procedure is appropriate for the side doors on all types of covered LTVs and passenger cars. To clarify the test procedure proposed in this notice, the agency also proposes to replace current Figure 1 of Standard No. 214 with a drawing that would represent the modified test procedure.

Contoured Doors

Mitsubishi asked about the appropriate positioning of the loading cylinder for a door whose lower edge is not at all points parallel to the door sill (i.e., is not at all points essentially horizontal). Specifically, Mitsubishi referred to the application of the quasi-static door strength test to the front side door of a forward control van, the lower edge of which is curved upward to accommodate the front wheel well. Currently, Standard No. 214 specifies aligning the loading cylinder with the mid-point of a horizontal line drawn across the door, five inches above the lowest point of the door. This procedure works well when the door's lower edge is itself essentially horizontal along its entire length, as is the case for the doors of most passenger cars.

However, the results obtained by following the existing version of the quasi-static door strength test procedure in testing doors with contoured lower edges may not be germane for two reasons. First, the portion of the door panel across which the horizontal line is drawn (five inches above the lowest point) may not be a large enough surface against which to apply the loading cylinder without causing the cylinder to

engage with some portion of the door's contoured edge as the cylinder presses inward. This is not desirable since the purpose of the door strength test is to evaluate the crush characteristics of the door panel itself, exclusive of any part of the frame, sill and floor structures, or any reinforcing structures that may be present around a wheel well contour. Thus, if the loading cylinder engages the contoured part of the door's lower edge during the test, that edge structure may distort the actual crush strength of the door.

Additionally, when the portion of the door panel across which the horizontal line is drawn (for purposes of positioning the cylinder) is very short, following the current test procedure results in placing the cylinder far to the side rather than in the center of the door panel. This is inconsistent with the purpose of the quasi-static door strength test. That test is intended to gauge the crush characteristics of the door panel at the middle of the door since that is its weakest region, where the greatest intrusion is likely to occur.

For the reasons, the existing quasi-static test procedure, aligning the loading cylinder with the mid-point of a horizontal line drawn five inches above the lowest point of the door, may not be an appropriate test procedure specification for a door with a lower edge that is not at all points parallel to the sill. Accordingly, NHTSA proposes to amend Standard No. 214 to modify the method of positioning the loading cylinder during the quasi-static door strength test so as to accommodate all types of vehicle doors, including those with contoured lower edges.

Under the new test procedure, the longitudinal axis of the cylinder would be aligned with the midpoint of a horizontal line drawn across the widest portion of the door, with its bottom surface located in the lowest horizontal plane such that the lateral projection of the bottom surface of the cylinder on the door is at least five inches from any edge of the door panel, including any contoured area. This procedure would replace the current procedure under which the cylinder's longitudinal axis is aligned with the midpoint of a horizontal line drawn five inches above the lowest point of the door, with the bottom surface of the cylinder placed in the same horizontal plan that contains the horizontal line.

This proposed new procedure for the quasi-static door strength test would address both of the problems created when the current procedure is followed in testing contoured doors and thus would ensure that the test is appropriate for those vehicles. First, by specifying that the lateral projection of the cylinder's bottom surface be at least five inches from any edge of the door panel, the new procedure would ensure that the cylinder does not engage with any structures other than the door panel during the test. Additionally, by specifying that the horizontal line be drawn across the widest portion of the door (the midpoint of which would be used to align the cylinder's longitudinal axis), the new procedure would ensure that the cylinder would be positioned essentially in the center, instead of toward the side of the door panel.

The proposed amendment is designed to modify the test procedure so that it is appropriate for every previously covered and newly covered vehicle. This amendment, if adopted, would primarily affect the testing of LTVs (which would be subject to Standard No. 214 effective September 1, 1993) and would not affect the placing of the cylinder in testing most passenger car doors since their lower edges are essentially horizontal. Under the new procedure, the cylinder would still be positioned, in the case of a door with a straight lower edge, in the center of the door panel, 5 inches above the bottom edge. The agency is aware that some rear passenger car doors have contoured lower edges, but has not found that any of these doors have high enough contours that following the new procedure instead of the current one would result in placing the loading cylinder in a different location. Although it is nevertheless possible that the proposed amendment would change the positioning of the cylinder for some passenger cars having contoured rear doors, the agency has tentatively concluded that any changes would enhance the benefits of the standard because the cylinder would be positioned closer to the center of the door panel, away from any contoured edges. Additionally, the agency has tentatively concluded that any such change would be minor and would not affect the compliance of those vehicles with Standard No. 214.

Doors With Moldings

Mazda recently raised an issue regarding the application of the quasi-static test procedures to vehicles equipped with decorative or protective side door moldings. Standard No. 214 currently specifies aligning the bottom surface of the loading cylinder with the midpoint of a horizontal line drawn five inches above the lowest point of the door. Mazda questioned whether a door molding that extends below the bottom edge of the metal door panel should be included in the determination of the "lowest point of the door". The agency responded that, under the language of the current standard, the lowest point of any door molding would be considered the lowest point of the door. The agency noted at that time that it was considering proposing an amendment to alter the determination of the lowest point on doors with moldings.

The agency now proposes to amend Standard No. 214 to reflect the tentative conclusion that the lowest point of a vehicle's door should be considered the lowest point on the outer door panel, excluding all decorative or protective moldings that extend below the door panel's lower edge. Standard No. 214 currently specifies that the bottom surface of the loading cylinder be positioned five inches above the door's lowest point to ensure that the test evaluates the crush strength of the vehicle's door structure alone. If the loading device were to be located closer to the lower edge of the door panel, the device would engage with the sill and floor structures of the vehicle and thus, distort the test results. When a vehicle's door has molding that extends below the bottom edge of the door panel, measuring five inches from the bottom of that molding has the effect of lowering the cylinder to such a point that it may engage with the sill and floor structure of the vehicle. This result is contrary to the Standard's intention of evaluating the crush strength of the door structure alone.

If the amendment is adopted, the test procedures would specify positioning the loading cylinder in the lowest position at the midpoint of a horizontal line drawn across the widest portion of the door panel such that every point on the lateral projection of the cylinder's bottom surface on the door would be at least five inches from the bottom edge of the door panel itself, exclusive of any decorative or protective molding. This new formulation of the test procedure would ensure that, for doors with moldings, the loading cylinder is appropriately positioned to evaluate the strength of the actual door structure, without any interference from the sill and floor structures.

Double Cargo Doors

Ford Motor Company asked whether double side cargo doors, a pair of hinged doors with the lock and latch mechanisms located where the two doors meet (i.e., where the door lips overlap), should be considered as two separate doors, and thus each tested separately, or treated as a single system and subjected to a single test. The treatment of the cargo doors not only

affects the number of door strength tests performed, but also the positioning of the loading cylinder during the test. If the cargo doors are treated separately, then each door would be tested with the loading cylinder positioned as specified in the current standard for any other individual door. If the cargo doors are treated together as a system, then the loading cylinder would be positioned so as to evaluate, during a single test, the strength of both doors simultaneously.

This notice proposes to amend Standard No. 214 to treat double cargo doors as a single system and to therefore specify that they be tested simultaneously. When testing double cargo doors, the agency would position the longitudinal axis of the loading cylinder laterally opposite the midpoint of a horizontal line drawn across the span of the two doors at the widest point. The cylinder would be located such that every point on the lateral projection of the bottom surface of the cylinder on the door would be at least five inches from any other edge of the door panels, exclusive of any decorative or protective moldings.

The agency proposes to treat cargo doors as a single system because the agency believes that the door strength test should determine the crush characteristics of a door's weakest region, where the greatest intrusion is likely to occur. Given that manufacturers use horizontal metal beams and pillars as the means of transmitting crash forces into the pillar structures of the doors, the cargo door system is weakest at its mid-point. The agency believes that this approach is appropriate for asymmetrical, as well as symmetrical pairs of doors because the weakest point of the double door span will generally be the midpoint, regardless of whether the two doors are the same size (and meet at the mid-point) or are of different sizes.

Windowless Doors

Finally, the agency has raised the issue of the proper positioning of the loading cylinder on rear side doors without windows. Currently, Standard No. 241 specifies positioning the upper end of the loading cylinder at least 0.5 inches above the bottom edge of the window opening. The current standard does not specify the positioning of the upper end of the cylinder in the case of windowless doors.

Accordingly, this notice proposes to amend the provisions of the side door strength test to accommodate instances in which the side door being tested does not have a window. The agency proposes that in such a case, the upper end of the loading cylinder be positioned at the same height above the ground as the cylinder is positioned when testing the front side door of the same vehicle which has a window.

Effective Dates

NHTSA is proposing an effective date of September 1, 1993 for the amendments to Sections S2.1 and S4. For LTV's, this date reflects the fact the requirements of Standard No. 214 become applicable to those vehicles at that time. Since the proposed amendments would clarify how the standard's test procedures is conducted for vehicles with certain types of doors, NHTSA believes that the amendments should have the same effective date as the primary requirements.

NHTSA notes, however, that it is currently considering a petition, submitted by GM, requesting reconsideration on the final rule extending Standard No. 214 to LTV's. In its petition, GM express concern that the agency had not yet specified the test procedures for LTV's with double opening cargo doors and doors with no windows. In part because of the delay in specifying these procedures, GM requested that the agency phase-in the requirements for LTV's. NHTSA plans to issue a response to GM's petition for reconsideration shortly. At this time, the agency notes that it plans to delay for one year the Standard No. 214 effective date for LTV's with double opening cargo doors and doors with no windows, as part of its response to GM's petition. If the effective date of the primary requirements are delayed for one year for those vehicles, the effective date of the clarifying amendments would also be delayed for one year (to September 1, 1994).

The agency notes that, for cars and LTV's, the proposed amendments would affect the positioning of the loading cylinder for testing doors with moldings, and could also affect the cylinder's position for testing some contoured rear doors. The proposal of a September 1, 1993 effective date is premised on the behalf that, despite the possible impact, a short leadtime is appropriate since any changes in the testing of vehicles caused by adopting the amendment would be minor and should not create any compliance difficulties. Manufacturers rely on side door beams, not the door sill or reinforcements around lower edge contours, to provide the structure necessary to meet Standard No. 214. Since the sill and contour structures are not factors in achieving compliance, a slight change in the positioning of the loading device to ensure that the loading device does not engage the sill or contoured edge during testing should not necessitate any changes in design. NHTSA requests comment, however, on whether the agency is correct in these beliefs, both with respect to passenger cars and LTV's currently being redesigned to meet Standard No. 214.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures.

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291. NHTSA has determined that this rulemaking action is significant within the meaning of the Department of Transportation's regulatory policies and procedures because it is related to an earlier major rule which extended the Standard No. 214 quasi-static test requirements for side door strength to LTV's. The amendments proposed in this notice, however, would not impose any new performance requirements but would instead clarify the application of an existing test procedure to certain newly covered vehicles whose doors have unusual configurations. Consequently, the agency expects to downgrade this action to non-significant in the event that the proposed amendments are adopted as a final rule and thus, the agency has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

This rulemaking action proposes to amend Standard No. 214 to clarify the side door strength test procedures for vehicles with certain types of doors. The proposed amendments would merely create a new testing procedure for those vehicles for whom the current procedure appears inappropriate. The new test procedure is not expected to have any significant effect on compliance costs as the new procedure should not significantly affect the compliance of passenger cars. Further, it should not significantly affect manufacturers' efforts to develop means of ensuring that LTV's comply with the side impact requirements by September 1, 1993. The proposed amendments should not affect the purchase price of new cars or LTV's and thus should not significantly affect small organizations and governmental units. Accordingly, the agency has not

prepared a preliminary regulatory flexibility analysis.

National Environmental Policy Act.

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, the seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S2.1 would be revised to read as follows:

§ 571.214 Standard No. 214; Side impact protection.

S2.1 *Definitions.*

Double cargo doors means a pair of hinged doors with the lock and latch mechanisms located where the door lips overlap.

Walk-in van means a van in which a person can enter the occupant compartment in an upright position.

3. S4 would be amended by revising paragraphs (b), (c) (2) and (3) to read as follows:

S4. *Test Procedures.* The following procedures apply to determining compliance with paragraph S3:

* * * * *

(b) Prepare a loading device consisting of a rigid steel cylinder or semicylinder 12 inches in diameter with an edge radius of one-half inch. The length of the loading device shall be such that:

(1) For doors with windows, the top surface of the loading device is at least one-half inch above the bottom edge of the door window opening but not of a length that will cause contact with any structure above the bottom edge of the door window opening during the test.

(2) For rear side doors without windows, the top surface of the loading device is at the same height above the ground as when the loading device is positioned in accordance with paragraph (b)(1) of this section for purposes of testing a door on the same vehicle.

(c) * * *

(1) * * *

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, its longitudinal axis is laterally opposite the midpoint of a horizontal line drawn across the widest portion of the outer surface of the door;

(ii) When testing double cargo doors, its longitudinal axis is laterally opposite the midpoint of a horizontal line drawn across the widest portion of the outer surface of the double door span;

(3) Its bottom surface is located in the lowest horizontal plane such that, every point on the lateral projection of the bottom surface of the device on the door is at least five inches, measured vertically and horizontally, from any edge of the door panel, exclusive of any decorative or protective molding.

* * * * *

4. Figure 1 to Standard 214 would be revised as follows:

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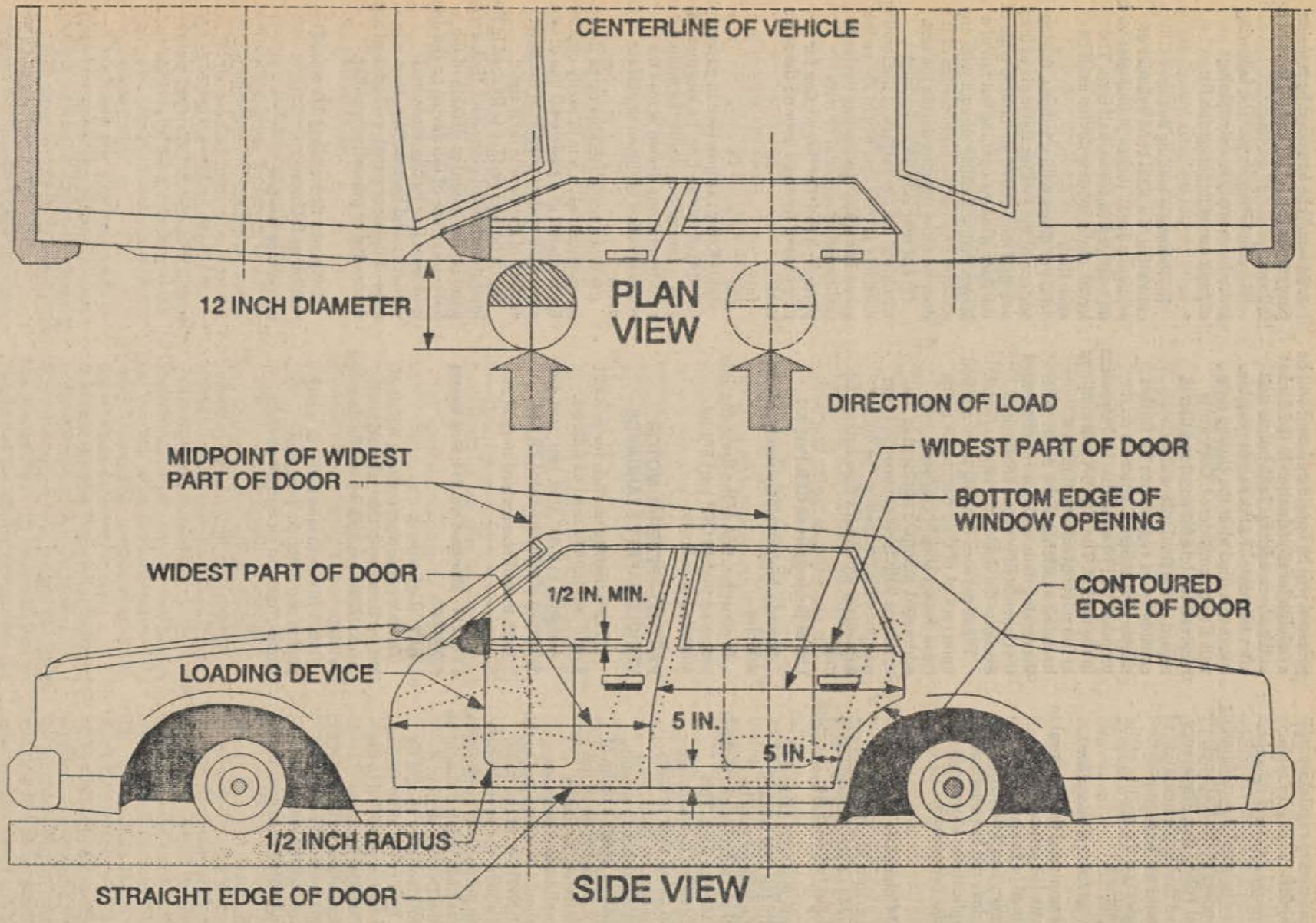

LOADING DEVICE LOCATION AND APPLICATION TO THE DOOR

FIGURE 1

BILLING CODE 4910-59-C

Issued on January 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-902 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary adjustment of standards; notice of public hearings and request for comments.

SUMMARY: NMFS will hold public hearings to solicit public input on a temporary adjustment of the meat count/shell height standards for Atlantic sea scallops.

DATES: The public hearings will be held on January 15, 1992, and on January 21, 1992, beginning at 10 a.m. Written comments will be accepted through January 21, 1992, at the address given below.

ADDRESSES: The January 15, 1992, hearing will be held in conjunction with the New England Fishery Management Council (Council) meeting at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA. The January 21, 1992, hearing will be held at the Northeast Regional Office of the NMFS, One Blackburn Drive, Gloucester, MA. Written comments should be addressed to Richard Roe, Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Senior Resource Policy Analyst, Fishery Management Operations, NMFS Northeast Region, 508-281-9331.

SUPPLEMENTARY INFORMATION: Section 650.22 of the regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) (50 CFR part 650) provides authority to the Regional Director to adjust temporarily the meat count/shell height standards upon finding that specific criteria are met. The standards can be adjusted within a range from 25 to 40 meats per pound and may be adjusted no more than 5 meats by any one adjustment. The Regional Director has considered the criteria specified in § 650.22(c) and has decided to recommend an adjustment to the standards from 30 to 33 meats per pound (shell height from 3½ inches to 3 7/16 inches) for the period February 1, 1992, through September 30, 1992.

The regulations require the Regional Director to hold a public hearing on this recommendation and to solicit comments from the Council. The Regional Director may modify this recommendation based on comments from the Council or the public. After consideration of the full record, a final determination will be made by the Regional Director whether or not to adjust the standards. If the Regional Director determines that the standards should be adjusted, notice will be published in the **Federal Register.**

Dated: January 9, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1066 Filed 1-14-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 10
Wednesday, January 15, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the regulations of the Advisory Council on Historic Preservation, "Protection of Historic Properties" (36 CFR part 800), that a panel of three members of the Council will meet on Monday, January 27, 1992, to consider the proposed development master plan for the Southeast Federal Center in Washington, District of Columbia. The proposal as currently planned calls for the preservation and renovation of several historic structures, the demolition of several historic structures, and the construction of more than 5 million square feet of new office space. This undertaking will affect the Washington Navy Yard Annex Historic District, which is eligible for listing in the National Register of Historic Places as well as other properties eligible for, or included in, the National Register.

The panel will meet in Washington, District of Columbia, in room M–07 of the Old Post Office Building, 1100 Pennsylvania Avenue NW, at 1 p.m. The panel welcomes written and oral statements from concerned parties. Written statements should be submitted to the Council by January 24, 1992. Persons wishing to make oral statements at the public hearing should contact the Council by January 24, 1992. While priority will be given to those persons who have indicated prior to the meeting their desire to speak, testimony of all interested parties will be heard.

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties that are listed in or eligible for listing in the National Register of Historic Places.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Council.

FOR FURTHER INFORMATION: Additional information is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., suite 809, Washington, DC 20004, Attention: Ralston Cox (202–786–0505).

Dated: January 9, 1992.

Robert D. Bush,

Executive Director.

[FR Doc. 92–1068 Filed 1–14–92; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Solvay Animal Health, Inc.; Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Solvay Animal Health, Inc., Mandota Heights, Minnesota, an exclusive license to U.S. Patent Application Serial No. 07/723,037, "Attenuated Reverant Serotype 1 Marek's Disease Vaccine," filed June 28, 1991. Notice of availability was given on December 17, 1991, in the **Federal Register.**

DATES: Comments must be received on or before March 16, 1992.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/504–6786, (FTS) 964–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention for Solvay Animal Health, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

M.A. Whitehead,

Coordinator, National Patent License Program.

[FR Doc. 92–987 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on mechanical transfer presses from Japan. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period August 18, 1989, through January 31, 1991. The review indicates the existence of a dumping margin for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda D. Ludwig, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (56 FR 5365). Four respondents requested an administrative review. We initiated the review on March 15, 1991 (56 FR 11177), covering the period from August 18, 1989, through January 31, 1991. Three respondents subsequently withdrew their requests for review. Accordingly, on May 22, 1991, the Department published a notice of "Termination in Part of Antidumping Duty Administrative Reviews" (56 FR 23548). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review include mechanical transfer presses currently classifiable under HTS item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

For purposes of this review, the term "mechanical transfer press" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review covers sales and entries by Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI) during the period from August 18, 1989, through January 31, 1991. This review does not cover spare and replacement parts and accessories, which are the subject of a pending scope inquiry.

United States Price

The Department based United States price on purchase price, in accordance with section 772(b) of the Act, as the sale was made directly to the first unrelated purchaser prior to importation into the United States. We based purchase price on the ex-factory price as reported by IHI, adjusted by U.S. packing costs.

Foreign Market Value

During the period of review, the respondent had one sale in the United States and one sale in the home market of mechanical transfer presses. As there are substantial differences between the two machines, we determined that they could not reasonably be compared. Accordingly, the Department used constructed value (CV), as defined in section 773(e) of the Act, to calculate foreign market value (FMV).

We calculated CV as the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses and profit. We used IHI's CV data, except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated capitalized interest expense using the short-term interest rates submitted by IHI as part of its credit expense calculation. We applied these rates to the costs accumulated in the cost ledgers, and added the resulting amount to the cost of manufacturing.
2. We revised interest expense by deducting short-term interest income from total interest expense. We then excluded the interest attributable to accounts receivable and inventory to avoid double counting the imputed credit expenses and to account for the capitalized interest expense.
3. We revised IHI's estimated cost of manufacture to reflect the final actual costs incurred as per the submitted cost ledger.
4. We recalculated product-specific Research & Development based on product cost of sales, instead of net sales as submitted.
5. We included non-operating items which appeared to be related to production activities of the company in the General & Administrative expenses.
6. We revised the variance calculation to reflect the submitted cost variances of the division which manufactured the products under review.
7. We revised the calculation of warranty and technical service expenses to include the value of U.S. procurement items.

In accordance with section 773(e)(1)(B)(i) of the Act, since IHI's general expenses exceeded the statutory minimum of ten percent of the cost of manufacturing (COM), we used the company's actual general expenses, as revised. For profit, in accordance with section 773(e)(1)(B)(ii), we used the statutory minimum figure of eight percent of the total of COM plus general expenses, as IHI's home market profit was less than that amount.

We made circumstance of sale adjustments to CV for credit, technical service, and warranty expenses, revising IHI's claimed adjustments to reflect the differences between the home market and U.S. costs. In accordance with 19 CFR 353.56(b)(1), we denied the claimed adjustment for a commission paid in the home market, which was not offset by indirect selling expenses in the U.S. market.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, the Department preliminarily determines that a margin of 1.31 percent exists for IHI for the period August 18, 1989, through January 31, 1991.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication, in accordance with 19 CFR 353.38(b). Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this review for all shipments of mechanical transfer presses from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until the final results of the next administrative review: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the final determination for

which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review of the manufacturer; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are unrelated to the reviewed firm and who were not covered in the original less-than-fair-value investigation will be 14.51 percent.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 8, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1087 Filed 1-14-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-502]

Deformed Steel Concrete Reinforcing Bar From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on deformed concrete steel reinforcing bar (rebar) from Peru.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On November 7, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 56983) its intent to revoke the countervailing duty order on rebar from Peru (40 FR 48819; November 27, 1985). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On November 21, 1991, Florida Steel Corporation, a petitioner in the original investigation, objected to revocation of this order. On December 2, 1991, the Government of Peru requested an administrative review of the order for the period January 1, 1990 through December 31, 1990. On December 23, 1991, we initiated that administrative review (56 FR 66429). Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-1086 Filed 1-14-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-180. *Applicant:* University of Miami, Rosentiel School of Marine and Atmospheric Science, 4600 Rickenbacker Causeway, Miami, FL 33149. *Instrument:* Mass Spectrometer System, Model 215-50. *Manufacturer:* Mass Analyzer Products Ltd., United Kingdom. *Intended Use:* The instrument will be used in an experiment focused on the measurement of the Xe and Kr isotopic systems in a variety of oceanic basaltic glasses. *Application Received by Commissioner of Customs:* December 3, 1991.

Docket Number: 91-181. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Southeast Fisheries Science Center, 3500 Delwood Beach Road, Panama City, FL 32408. *Instrument:* Electronic Measuring Board with Accessories. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* The instrument will be used to collect bioprofile information of various coastal and reef marine fish species. The objective of the experiments is to restore and manage the identified marine fisheries and to maintain them at the maximum sustainable yield. *Application Received by Commissioner of Customs:* December 6, 1991.

Docket Number: 91-182. *Applicant:* The University of Kansas, Lawrence, KS 66045. *Instrument:* Mass Spectrometer System, Model VG Autospec-Q. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used to perform high (keV) and low (10-500 eV) energy collision experiments on ions from samples ionized by electron, chemical and fast atom bombardment methods. Sample introduction will be by gas chromatography, liquid chromatography, static FAB, flow FAB, direct insertion or direct ionization probe. Important sample types will be peptides and coordination compounds/organometallic for which FAB ionization is the method of choice. Collision data will be used for structural characterization on both classes of compounds. The instrument will also be used for exact mass determinations at 8,000 to 30,000 resolution and 6 ppm, or better, accuracy. *Application Received by Commissioner of Customs:* December 6, 1991.

Docket Number: 91-183. *Applicant:* East Carolina University, Materials Management, Whichard Building, Greenville, NC 27834. *Intrument:* Stopped-Flow Sample Handling Unit—Spectrometer Workstation. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used for the study of the regulation of muscle contraction and the mechanism by which muscle produces force. Specifically, the instrument will be used to measure the change in binding constant of ATP and ATP&S to myosin-actin-tropomyosin-troporin with changes in calcium concentration. A second line of experimentation involves the smooth muscle regulatory proteins caldesmon and calponin. This includes the measurement of the effect of these proteins on the rate of ADP release and on the rate of dissociation of myosin from actin in the presence of ATP. In addition, the instrument will be used for educational purposes in the courses: "Introduction of Research," "Dissertation Research," and "Physical Biochemistry." *Application Received by*

Commissioner of Customs: December 10, 1991.

Docket Number: 91–184. *Applicant:* The Connecticut Agricultural Experiment Station, 123 Huntington Street, P.O. Box 1106, New Haven, CT 06504. *Instrument:* Volumetric Spore Trap. *Manufacturer:* Burkard Manufacturing Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used to study three important plant diseases in Connecticut: apple scab, chestnut blight and Septoria leaf spot of tomato. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–185. *Applicant:* University of Illinois at Urbana-Champaign, 506 South Wright Street, Urbana, IL 61301. *Instrument:* Mass Spectrometer, Model IMS–5F. *Manufacturer:* Cameca, France. *Intended Use:* The instrument will be used for analysis of the elements present on a microscopic scale in semiconductors, ceramics and metals which will contribute to the understanding of a wide range of materials problems. These will include, for example, diffusion, ion implantation, doping and annealing. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–186. Applicant: Hofstra University, 1000 Fulton Street, Hempstead, NY 11550. *Instrument:* Stopped-Flow Kinetics Accessory, Model SFA–12M. *Manufacturer:* Hi Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for the study of the properties of lipid vesicles. These studies will measure the rate of fusion of lipid vesicles, and the rates of processes involved in ion binding to lipid vesicles. The objective of the experiments is to gain an understanding of the mechanism of vesicle fusion as a model for cellular fusion processes. In addition, the instrument will be used in advanced laboratory courses, specifically Biochemistry Laboratory (173) and Physical Chemistry Laboratory (147–148). *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–187. *Applicant:* The Pennsylvania State University, Materials Research Laboratory, University Park, PA 16802–4801. *Instrument:* CCD Microscope System. *Manufacturer:* Japan High Tech Co., Ltd., Japan. *Intended Use:* The instrument will be used for the examination of domain and phase phenomena which contribute to the electrically controlled change of shape and change of piezoelectric response in families of ferroic transducers and actuators which are most relevant to navy needs. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–188. *Applicant:* Washington State University, Division of Purchasing, French Administration Building, Room 220, Pullman, WA 99164–1020. *Instrument:* Rheometer. *Manufacturer:* Physica Messtechnik GmbH U Co., KG, Germany. *Intended Use:* The instrument will be used to investigate the rheological properties of gums and gum mixtures in order to create a general picture of function of typical gums or gum mixtures. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–192. *Applicant:* The Johns Hopkins University, Charles & 34th Streets, Baltimore, MD 21218. *Instrument:* Anemometry System Mainframe, Power Supply, Test Module and Accessories, Model AN–1003. *Manufacturer:* AA Systems Laboratory, Israel. *Intended Use:* The instrument will be used to perform experiments on turbulent motion in the wake behind a cylinder in a large wind tunnel. The properties of the phenomena to be studied are 5% turbulence intensity velocity fluctuations of air. The objective of the research is to study subgrid-scale models that will be used in the near future for turbulence simulations to e.g., study dynamical flow-fields around aircraft, cars, mixers of chemicals, combustion chambers, in brief any flow that displays turbulent motion. *Application Received by Commissioner of Customs:* December 13, 1991.

Docket Number: 91–193. *Applicant:* The Ohio State University, Department of Veterinary Clinical Sciences, 1935 Coffey Road, Columbus, OH 43210–1089. *Instrument:* Grinding (Lapping) Machine, Model ML–521D. *Manufacturer:* Maruto Instrument Co., Ltd., Japan. *Intended Use:* The instrument will be used for the study of methyl methacrylate embedded bone tissues of animals, mainly dogs. The main objectives of the investigations are: (1) Documentation of microradiographic changes in remodeling activities in the spine and long bones in aging beagles and (2) characterization of histologic changes in undecalcified bone sections in the spine and long bones of aging beagles. *Application Received by Commissioner of Customs:* December 13, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–1085 Filed 1–14–92; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 920104–2004]

Manufacturing Technology Centers

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of the availability of funds; notice of meeting.

SUMMARY: In accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 278k, the National Institute of Standards and Technology is announcing the availability of funds and requesting proposals to establish two additional Manufacturing Technology Centers. In addition, NIST is announcing a public briefing for potential applicants to further discuss the program and answer questions concerning the application and selection process. (Catalog of Federal Domestic Assistance No. 11.611 "Manufacturing Technology Centers Program.")

DATES: 1. Closing Date. Proposals must be received at the address below by April 14, 1992.

2. The applicants' briefing will begin at 9:30 a.m. on February 7, 1992.

ADDRESSES: 1. Applicants must submit one signed original plus fourteen (14) copies of their proposal along with the Standard Form 424 (Rev 4–88), Standard Form 424A (4–88), and Standard Form 424B (4–88) to: Director, NIST Manufacturing Technology Centers Program, Building 222, room B212, National Institute of Standards and Technology, Gaithersburg, MD 20899. Plainly mark on the outside of the package that it contains an "MTC Proposal."

2. The applicants' briefing will be held in the Administration Building (Green Auditorium), National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Kevin Carr at (301) 975–5020 (voice) or (301) 926–2934 (fax).

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Standards and Technology (NIST) will provide assistance for the creation and support of Manufacturing Technology Centers. Such Centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies for and is awarded financial assistance in accordance with the procedures set forth in 15 CFR part

290. Individual awards shall be decided on the basis of merit review.

The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through:

(1) The transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

(2) The participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

(3) Efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

(4) The active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small and medium-sized manufacturing companies; and

(5) The utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than the Institute.

Manufacturing Technology Centers are established and operated via cooperative agreements between NIST and the award-receiving organizations. To date, NIST has awarded funding for five Centers. These Centers are the Southeast Manufacturing Technology Center (SMTC) in Columbia, South Carolina, the Great Lakes Manufacturing Technology Center (GLMTC) in Cleveland, Ohio, the Northeast Manufacturing Technology Center (NEMTC) in Troy, New York, the Mid-America Manufacturing Technology Center in Overland Park, Kansas, and the Midwest Manufacturing Technology Center in Ann Arbor, Michigan.

Request for Proposals

Contingent upon the availability of FY 92 and future year funding, NIST plans to establish two additional Centers with maximum NIST funding levels of $1.5M, $3.0M, $3.0M, $2.4M, $1.8M, $1.2M for years 1 through 6, respectively, for each Center. Applicants are required to contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share of 60, 70, and 80 percent in years 4, 5, and 6, respectively. The continuation and level of NIST funding from year to year will be at the discretion of NIST based on such factors as satisfactory performance and the availability of funds.

The competition is open to proposals based on any of the major discrete part manufacturing technology disciplines in which NIST has technical expertise (for example, mechanical parts, electronics assembly, composites). Geographical location, physical size, concentration of industry, and economic significance of the service region's manufacturing base will be factors in the evaluation of new proposals. A proposal for a Center located near an existing Center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

NIST will provide all qualified proposals to a Merit Review Panel organized by the National Research Council (NRC) which will evaluate the proposals in accordance with the evaluation and selection criteria below as extracted directly from 15 CFR part 290. NIST will consider the findings of the NRC Merit Review Panel in its final selection. NIST anticipates making the selection and announcement of the award receiving Centers by [date to be insert by NIST immediately prior to publication].

Applicants' Briefing

NIST will conduct a public meeting to present an overview of the Program and to allow interested parties and potential applicants to discuss program issues with Institute staff. Representatives from existing NIST Centers will be available at the briefing to answer any questions concerning their respective programs. The meeting will be held at the Institute at the location and time shown above. No advanced registration or fee for attendance is required. Organizations are invited to send a one page fax of the names or approximate number of persons planning to attend to the fax number listed above in order to permit NIST to anticipate attendance.

Proposal Requirement Highlights. Applicants should refer directly to 15 CFR 290, which contains the guidelines for the application, qualification, selection and establishment of Centers. Applicants should particularly note:

- There is a 25 page limitation on the basic proposal text;
- Appendices, or other relevant information, in support of the basic proposal, should be submitted as a separate volume;
- The applicant is required to contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share of 60, 70, and 80 percent in years 4, 5, and 6, respectively;
- At least 55% of the applicant's share must consist of cash from various sources or in-kind contributions of full-time personnel;
- The Center must focus its activities on transferring new manufacturing technology rather than on performing research and development;
- Each Center shall be affiliated with a U.S.-based nonprofit institution or organization which has submitted a qualified proposal for a Center Operating Award under these procedures; and,
- Support may be provided by NIST for a period not to exceed six years.

Proposal Evaluation and Selection Criteria

In making a decision whether to provide financial support, NIST shall review and evaluate all qualified proposals in accordance with the following criteria, assigning equal weight to each of the four categories.

(1) *Regional Need.* Does the proposal define an appropriate service region with a large enough target population of small- and medium-sized manufacturers which the applicant understands and can serve, and which is not presently served by an existing Center?

(i) Market Analysis. Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(ii) Geographical Location. Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of Centers will be a factor in evaluation of proposals; a proposal for a Center located near an existing Center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

(2) *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in these procedures?

(3) *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers?

(i) Linkages. Development of effective partnerships or linkages to third parties who will amplify the Center's technology delivery to reach a large number of clients in its service region.

(ii) Program Leverage. Provision of an effective strategy to amplify the Center's technology delivery approaches to achieve national impact as described in § 290.3(e).

(4) *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective Center?

(i) Organizational Structure. Completeness and appropriateness of the organizational structure, and its focus on the mission of the Center. Assurance of full-time top management of the Center.

(ii) Program Management. Effectiveness of the planned methodology of program management.

(iii) Internal Evaluation. Effectiveness of the planned continuous internal evaluation of program activities.

(iv) Plans for Financial Matching. Demonstrated stability and duration of the applicant's funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments. Evidence of the applicant's ability to become self-sustaining in six years.

(v) Budget. Suitability and focus of the applicant's detailed one-year budget and six-year budget outline.

Supporting Information Packet. NIST has prepared a supplementary information packet which contains: a copy of 15 CFR part 290; background information on the existing Centers and the NIST Automated Manufacturing Research Facility, the Manufacturing Engineering Laboratory, the Electronics and Electrical Engineering Laboratory, the Computer Systems Laboratory, and the Materials Science and Engineering Laboratory; Standard Form 424 (Rev 4–88), Standard Form 424 (4–88), and Standard Form 424B (4–88); and OMB Circular A–110. Information packets are available upon request from the information contact above. Requests via a one page fax to the above number are preferred. Please include name, mailing address, and telephone number.

Paperwork Reduction Act: This notice contains a collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget under control number 0693–0005 for use through September 30, 1992.

Other Requirements, Requests, and Provisions: Applicants who have outstanding accounts receivable with the Federal Government may not be considered for Manufacturing Technology Centers Program funding until the debts have been paid or arrangements satisfactory to the Department are made to pay the debt. The Manufacturing Technology Centers Program does not involve the mandatory payment of any matching funds from a State or local government, and does not affect directly any State or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program.

Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" is required to be submitted with any application for funding under the Manufacturing Technology Centers program. Applicants for funding are subject to Government-wide Debarment Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement. A false statement on any application for funding under the Manufacturing Technology Centers program may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Awards under the Manufacturing Technology Centers program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Dated: January 8, 1992.

John W. Lyons,

Director, National Institute of Standards and Technology.

[FR Doc. 92–966 Filed 1–14–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of a Scientific Research Permit (P171B).

On December 4, 1991, notice was published in the **Federal Register** (56 FR 61232) that an application had been filed by Ms. Deborah Glockner-Ferrari and Mr. Mark J. Ferrari, Covington, LA 70433, for a Permit to harass annually, over a five-year period: Up to 1,500 humpback whales (*Megaptera novaeangliae*) during observational/photo-identification studies and collection of sloughed skin samples; and up to 500 bottlenose dolphins (*Tursiops truncatus*), 500 spotted dolphins (*Stenella attenuata*), 1,000 spinner dolphins (*Stenella longirostris*), 200 false killer whales (*Pseudorca crassidens*), and 100 pilot whales (*Globicephala macrorhynchus*) during opportunistic observational/photo-identification studies. On December 20, 1991, a notice of correction was published in the **Federal Register** revising the earlier notice to include the applicants' request to export from the United States to England sloughed skin samples from humpback whales. Research activities will be limited to Hawaiian waters.

Notice is hereby given that on _____, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit to the above applicant to harass the species/numbers of marine mammals described above, subject to certain conditions set forth therein. To provide a standard, quantifiable measure of approach effort, approaches to humpback whales <100 yards (<300 yards in designated cow/calf waters), approaches to small cetaceans <50 yards, and those animals showing signs of being disturbed no matter the distance are considered "taken" by harassment and counted against the number of animals authorized in the Permit. In light of a planned review by the National Marine Fisheries Service of North Pacific humpback whale research during 1992, the Permit is being issued through December 31, 1992 only.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that the Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and associated documents are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/713–2289);

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, Hawaii 96822–2396 (808/955–8831); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: January 8, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–1005 Filed 1–14–92; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995–2020 (Support panel) will meet on 30–31 January 1992, at HQ AFSOC, Hurlburt AFB, FL, 8 a.m. to 5 p.m.

The purpose of this meeting is to receiving briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–1090 Filed 1–14–92; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 22, 1992. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include status reports on the upper Delaware ice jam project, amendment of Compact section 15.1(b) to fund the F. E. Walter Reservoir project, revised retail water pricing proposal, golf course irrigator compliance and a briefing on the Scenic Rivers water quality protection proposal.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *County of Bucks D–91–36 CP.* An application for approval of an increased allocation of ground water withdrawal to supply the applicant's Neshaminy Manor Complex from Well Nos. 2, 4 and 5. Docket D–85–44 CP, approved on June 27, 1985, limited the withdrawal from Well Nos. 1, 2, 3 and 4 to 4.5 mg/30 days. Docket D–87–99 CP, approved on June 22, 1988, limited the withdrawal from Well No. 5 to 3.0 mg/30 days without an increase in total system withdrawal. Well Nos. 1 and 3 have been abandoned due to low yields. The applicant requests that the total withdrawal from all wells be increased from 4.5 mg/30 days to 6.0 mg/30 days. The project is located in Doylestown Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Dairy Center Inc. D–91–39.* An industrial wastewater treatment plant (IWTP) upgrade and expansion project that entails modifications to the applicant's existing 91,384 gallons per day (gpd) activated sludge IWTP to improve effluent quality and increase the average treatment capacity to 150,000 gpd. The IWTP will continue to serve the applicant's dairy products and fruit juice processing plant and the treated effluent will discharge to Pine Run via a new outfall structure in Upper Dublin Township, Montgomery County, Pennsylvania.

3. *Maidencreek Township Water Authority D–91–58 CP.* An application for approval of a ground water withdrawal project to supply up to 13.2 mg/30 days of water to the applicant's distribution system from new Well No. 3 (Faust Well), and to retain the existing withdrawal limit from all wells of 13.2 mg/30 days. The project is located in Maidencreek Township, Berks County, Pennsylvania.

4. *Hazleton City Authority D–91–65 CP.* An application for approval of a ground water withdrawal project to supply up to 3.6 mg/30 days of water to the applicant's distribution system from the new Buck Mountain Well No. 1, without an increase in the previously approved water withdrawal from the Buck Mountain Creek watershed, and without an increase in the previously approved exportation of water from the Delaware River Basin. The Buck Mountain Well is to replace the unfiltered, giardia-contaminated surface water supply. The project is located in Lausanne Township, Carbon County, Pennsylvania.

5. *East Bangor Municipal Authority D–91–85 CP.* The applicant proposes to construct a 0.10 million gallons per day (mgd) sewage treatment plant (STP) with an outfall discharging to Brushy Meadow Creek. The proposed STP project will provide secondary treatment facilities to be located cn the eastern bank of Brushy Meadow Creek, approximately 1000 feet upstream of Bangon Borough's corporate boundary, in East Bangor Borough, Northampton County, Pennsylvania.

Proposed Comprehensive Plan Amendment with Respect to Recreational Areas in the State of Delaware. A proposal to revise the Comprehensive Plan by the deletion of the Delaware facilities from the list of non-urban areas included in Phase I of the Plan, July 1962, and the inclusion of the current list of water-related recreational projects located in the Delaware portion of the Delaware River Basin.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: January 7, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92–1040 Filed 1–14–92; 8:45 am]

BILLING CODE 6360-10-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award a Grant to the American Filtration Society

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(B), it is making a noncompetitive financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1). This award will be made under Grant Number DE–FG01–92FE62555 to the American Filtration

Society. The financial assistance will provide partial support to the Fluid/Particle Processing and Separation Conference/Workshop.

SCOPE: The grant will provide $5,000 in funding to the American Filtration Society to host the Fluid/Particle Processing and Separation Conference/Workshop in Gainesville, Florida. The process of separating particles from fluids is basic to both energy production and environmental protection. The Conference/Workshop contributes to this research by increasing societal emphasis on domestic and industrial activities affecting the environment and our natural resources. This workshop also provides a framework conducive to new research and educational initiatives; research and education are essential foundations in fluid/particle separation processing, and are prerequisite for future competitiveness of this nation in the world market.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the American Filtration Society. DOE support of this activity would enhance the public benefits to be derived. DOE knows of no other entity which is conducting or planning such a program.

The term of the grant shall be until March 30, 1992.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: James F. Thompson, 1000 Independence Avenue, SW., Washington, DC 20585.

Arnold A. Gjerstad,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92-1084 Filed 1-14-92; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board; Task Force on Radioactive Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meetings:

Name: Secretary of Energy Advisory Board Task Force on Radioactive Waste Management.

Date and Time: February 4 and 5, 1992, 9 a.m.-5 p.m.

Location: Lecture Room, Beckman Center, 100 Academy Drive, Irvine, CA 92715.

Contact: Dr. Daniel S. Metlay, AC-1, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3903.

Purpose: The Secretary of Energy Advisory Board Task Force on Radioactive Waste Management was established in October 1990 to: (1) Identify the factors that affect the level of public trust and confidence in Department of Energy programs; (2) assess the effectiveness of alternative financial, organizational, legal, and regulatory arrangements in promoting public trust and confidence; (3) consider the effects on other programmatic objectives, such as cost and timely acceptance of waste, of those alternative arrangements; and (4) provide the Secretary with recommendations and guidance for implementing those recommendations.

Tentative Agenda

February 4, 1992

9 a.m.-12 Noon—Task Force discussion with participants in the National Academy of Sciences and National Academy of Public Administration workshop.
12 Noon-1:30 p.m.—Lunch break.
1:30 p.m.-4:30 p.m.—Continuation of discussion with workshop participants.
4:30 p.m.-5 p.m.—Public comments.
5 p.m.—Adjournment.

February 5, 1992

9 a.m.-12 Noon—Task Force discussions.
12 Noon-1:30 p.m.—Lunch break.
1:30 p.m.-2 p.m.—Public comments.
2 p.m.-5 p.m.—Continuation of Task Force discussions.
5 p.m.—Adjournment.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Members of the public are welcome to comment at the meetings on any of these presentations or to provide views on other matters that fall within the scope of the Task Force's Work. It is requested that those individuals provide 15 copies of their statements at the time of their presentation. Members of the public may also submit written comments to Dr. Metlay at the address given above.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: January 10, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-1083 Filed 1-14-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER92-5-000]

Connecticut Light & Power Co.; Filing

January 6, 1992.

Take notice that Connecticut Light & Power Company (CP & L) tendered for filing an amendment to its October 1, 1991 filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-991 Filed 1-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-86-000]

Mojave Pipeline Co.; Tariff Filing

January 8, 1992.

Take notice that Mojave Pipeline Company ("Mojave"), on January 8, 1992, tendered for filing its FERC Gas Tariff Original Volume No. 1, in compliance with part 154 of the Commission's regulations and the Commission's orders of January 24, 1990, August 13, 1991 and December 3, 1991 in Docket Nos. CP89-001 and CP89-002 ("Certificate Orders").

Mojave's filed tariff contains firm and interruptible transportation rate schedules, the general transportation terms and conditions, the form of service agreements for firm, interruptible and initial transportation service, the statement of transportation rates, and the index of shippers. The tariff also incorporates the changes to Mojave's tariff as described by the Certificate Orders, as well as new creditworthiness provisions, Order No. 497 provisions, corrections of typographical errors and conforming changes. Mojave proposes that its tariff become effective on February 1, 1992.

Mojave states that copies of the filing have been served upon all of Mojave's jurisdictional transportation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-992 Filed 1-14-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4093-2]

National Emission Standards for Coke Oven Batteries Advisory Committee; Establishment and Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Establishment of advisory committee and notice of open meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App., EPA is giving notice of the establishment of an advisory committee to develop specific recommendations with respect to National Emission Standards for Coke Over Batteries pursuant to section 112 of the Clean Air Act, as amended. EPA has determined that the establishment of this committee is in the public interest and will assist the Agency in performing it duties under sections 112, 114, and 301(a) of the Clean Air Act as amended. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

The Committee solicits anyone who believes their interest would be significantly affected by a National Emission Standard for Coke Over Batteries, who also believes that interest is not adequately represented on the Committee, to apply for membership on it. Applications must be received by the close of business on January 28, 1992.

DATES: The Committee will meet on February 6 and 7, and on February 19 and 20. Both meetings will run from 11 until 6 on the first day and from 8:30 until 3 on the second. The meetings are open to the public without advance registration. Members of the public may attend, make statements during the meeting to the extent time permits, and file reports with the Committee for its consideration.

ADDRESSES: Both meetings will be held at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC, 202-638-1616.

A docket has been established for the advisory committee. Comments concerning the committee and its work should be submitted (in duplicate if possible) to Air Docket Section, Attention Docket #A-79-15, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy should also be sent to Amanda Agnew, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27111. This docket contains materials relevant to this advisory committee, and it may be inspected in room 1500M, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC, between 8:30 a.m. and noon, and 1:30 p.m. until 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Anyone wanting further information on the substantive matters related to the National Emission Standard for Coke Oven Batteries should call Amanda Agnew, Office of Air Quality Planning and Standards at 919-541-5268. Anyone wanting further information on administrative matters such as committee arrangements or procedures should contact the committees independent facilitator, Philip J. Harter at 202-887-1033.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 require EPA to issue National Emission Standards for Coke Over Batteries by December 31, 1992. The agency has conducted informal discussions to review emissions data from coke ovens, the cost of various compliance activities, and their economic impact. The discussions have gone well, and the participants have proposed developing specific recommendations to the agency concerning the regulation of coke ovens under the CAAA. EPA now believes that using an advisory committee to make specific recommendations with respect to the coke oven standards would help the agency achieve its statutory mandate. It is therefore establishing the National Emission Standard for Coke Over Batteries Advisory Committee.

Background

EPA first addressed coke ovens in the late 1970s. A standard was proposed in 1987, but it was held in abeyance due to the anticipated requirements of the Clean Air Act Amendments. The new regulations are required by title II of the Act as amended. The purpose of title III is to reduce the adverse effects of hazardous air pollutants from new and existing sources. Section 112 required EPA to set allowable emission limits for coke oven doors, lids, removals (offtakes), and seconds of charging.

Statutory Provisions

The Clean Air Act requires standards for maximum achievable control technology (MACT) for existing sources, lowest achievable emissions rate (LAER) for existing sources, MACT for new sources, and work practices. When considering limits for MACT for existing sources, the CAAA specify that these standards are to require at minimum that coke oven emission not exceed 8 percent leaking doors on each battery, 1 percent leaking lids, 5 percent leaking offtakes, and 16 seconds of visible emissions per charge. In establishing the standards, the use of luting compounds to prevent door leaks and the use of nonrecovery technologies as the basis for standards for new sources must be evaluated. Existing coke oven batteries must comply with the standards by December 31, 1995, and new batteries must comply with MACT for new sources upon start-up. EPA is required to issue the new regulations by December 31, 1992.

Section 112(d)(8) also requires promulgation of work practice regulations for new and existing coke over batteries. Existing batteries must comply with the work practice regulations by November 15, 1993. The CAAA specify that the work practice regulations require—as appropriate—the use of luting compounds, if EPA determines they are an effective means of controlling leaks, as well as door and jam cleaning practices.

Section 112(f) also requires EPA to promulgate residual risk standards in the year 2000. Coke oven batteries would be required to comply with these limits by December 31, 2003. Section 112(f) permits an owner or operator of a coke oven battery to defer meeting the residual risk limit until the year 2020 provided that the following requirements are met:

• By November 15, 1993, batteries must not exceed 8 percent leaking doors, 1 percent leaking lids, 5 percent leaking offtakes, and 16 seconds of visible emissions per charge.

• By January 1, 1998, the batteries must meet the LAER standard that is defined as the lowest achievable emission rate for a coke oven battery that is rebuilt or replacements at a coke oven plant for an existing battery, or any subsequent revision of LAER. The Act requires that these limits may be no less stringent than 3 percent leaking doors for doors less than 6 meters high and 5 percent leaking doors for doors 6 meters or higher; 1 percent leaking lids; 4 percent leaking offtakes; and, 16 seconds of visible emissions per charge. An exclusion may be considered for emissions from doors during the period after the closing of self-sealing oven doors or the total mass emissions equivalent.

• By January 1, 2000, the owner or operator must make available to the surrounding community the results of any risk assessment performed by EPA to determine the appropriate level of residual risk standard.

The Committee and Its Process

During the spring and summer, EPA met with representatives of the industry, unions, and environmental groups to discuss the data EPA had and which it anticipated using as the basis of the new regulations. EPA held discussions over the data with representatives of industry, both the integrated steel manufacturers and independent coke producers, labor unions, environmental organizations, and state and local air pollution control officials. A workshop format was used to explore and clarify the varying viewpoints.

EPA and the workshop participants think the exchange has been mutually beneficial. As a result, EPA now believes it would be appropriate for the workshop to transform itself and make specific regulatory recommendations for implementing the coke oven sections of the Clear Air Act Amendments. EPA is therefore establishing the National Emission Standards for Coke Oven Batteries Advisory Committee to do so.

The recently enacted Negotiated Rulemaking Act of 1990 contemplates a "convening" process during which the potential parties and issues are identified, publishing a notice of intent to form the committee, waiting 30 days for comments to be submitted responding to the notice, and only then proceeding with the establishment of the committee provided it meets the criteria of the Act. The workshop process has served the same function as the convening—parties that would be significantly affected have been identified and the issues in the controversy have been defined. The discussions have also enabled the agency to determine that the criteria for negotiating rules, as spelled out in the Negotiated Rulemaking Act and the ones that have guided EPA in the past, are met for this rule—

• The rule is needed, since it is *required* by the CAAA.

• A limited number of identifiable interests will be significantly affected by the rule. Those parties are coke producers (both integrated steel manufacturers and merchant coke producers), unions, environmental organizations, and state and local air pollution control officials. Since coke and those who use coke are subject to intensive international competition, the producers of coke and the integrated steel producers also represent the end user's interest in keeping prices low and competitive.

• Representatives can be selected to adequately represent these interests, as reflected above.

• The interests are willing to negotiate in good faith to attempt to reach a consensus on a proposed rule. This committee is being established to enable them to do just that.

• There is a reasonable likelihood that the committee will reach consensus on a proposed rule within a reasonable time. This determination has been made following the data discussions, and hence is built on the developments to date.

• The use of the negotiation will not delay the development of the rule if time limits are placed on the negotiation. Indeed, its use will expedite it and the ultimate acceptance of the rule.

EPA is not proposing to issue a separate notice of intent to form a negotiated rulemaking committee for this rule. Given the evolution of this committee, the publication of such a notice would only slow down the rulemaking process, which to comply with CAA is on an expedited basis, and its functions have either already been met or are provided for in this notice. Moreover, the Act specifically provides that its provisions are not mandatory.

The Act does anticipate an outreach to ensure that people who were not contacted during the convening of the committee can come forward to explain why they believe they would be significantly affected and yet not represented on the committee or to argue why they believe the rule should not be negotiated. As discussed below, anyone who believes they meet the criteria are invited to apply for membership on the committee.

Committee Membership

Environmental Protection Agency

Bruce Jordan, Director, Emission Standards Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27111

John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27111

Michael Shapiro, Deputy Assistant Administrator for Air and Radiation, Room 937 West Tower, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental and Citizens Organizations

David Doniger, Natural Resources Defense Council

Larry Davis, Hoosier Environmental Council

Shirley Virosteil, Group Against Fog and Pollution (GAFP)

Industry

David M. Anderson, General Manager, Environmental Affairs, Bethlehem Steel Corporation

Charles T. Drevna, Vice President, Public Affairs, Sun Coal Company

Martin C. Dusel, Vice President, Manufacturing Operations, Citizens Gas & Coke Utility

Philip X. Masciantonio, Vice President, Environmental Affairs, USS, A Division of USX Corporation

David E. Menotti, Perkins Coie

Bruce A. Steiner, Vice President, Environment and Energy, American Iron and Steel Institute

John M. Stinson III, Director, Government Affairs, National Steel Corp.

State and Local Air Pollution Control Officials

William Becker, Executive Director, STAPPA/ALAPCO

Charles Goetz, Allegheny County Health Department, Bureau of Air Pollution Control

Richard Grusnick, Chief, Air Division, Alabama Department of Environmental Management

Ward T. Kelsey, Assistant Counsel, Pennsylvania Department of Environmental Regulation

Note: We expect to have at least one additional State and one additional Local member as well.

Unions

John J. Sheehan, United Steelworkers of America

Michael J. Wright, Director, Health, Safety and Environment Department, United Steelworkers of America

Application for Membership

Anyone who believes they would be significantly affected by a National Emission Standard for Coke Ovens and who believes their interest would not be

adequately represented by the Committee described above is invited to apply for membership on the committee or to nominate someone else for membership on the committee. An application for membership should include:

1. The name of the applicant or nominee and a description of the interest(s) such person will represent.

2. Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent.

3. A commitment that the applicant or nominee will actively participate in good faith in the development of the standards, and

4. The reason that the members of the Committee who are described above do not adequately represent the interests of the person submitting the application or nomination.

To be considered, the application must be received by the close of business on Monday, February 3, 1992. The application should be sent to Chris Kirtz, Director, Consensus and Dispute Resolution Project, Environmental Protection Agency (PM–223Y), 401 M Street SW., Washington, DC 20460.

EPA will give full consideration to all applications and nominations. The decision to add a person to the Committee will be based on whether an interest of that person will be significantly affected by the proposed rules, whether that interest is already adequately represented on the Committee, and if not, whether the applicant or nominee would adequately represent it.

Schedule

The Committee will meet on February 6 and 7, and on February 19 and 20 at The Quality Hotel Capitol Hill. Both meetings will run from 11 until 6 on the first day and 8:30 until 3 on the second. The meetings are open to the public without advance registration. Members of the public may attend, make statements during the meeting to the extent time permits, and file reports with the Committee for its consideration. At both days of each meeting, the Committee will work to fashion specific recommendations with regard to National Emission Standards for Coke Oven Batteries.

Dated: January 10, 1992.

Chris Kirtz,

Designated Federal Official, Coke Oven Battery Advisory Committee.

[FR Doc. 92–1073 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–M

[PF–558; FRL–4009–5]

Rhone Poulenc Ag Co.; Notice of Amended Pesticide Petition for Fosetyl-Al

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rhone Poulenc Ag Co. the filing of an amendment to pesticide petition (PP) 0F3841 proposing to establish a tolerance of 55 parts per million (ppm) for the residues of the fungicide fosetyl-al in or on the brassica crop grouping.

ADDRESSES: By mail, submit written comments identified by the document control number, [PF-558], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM-22), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5540.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the Rhone Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, an amendment to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 0F3841 that appeared in the **Federal Register** of June 29, 1990 (55 FR 26752) and proposed to amend 40 CFR 180.415 to establish a tolerance of 45 parts per million (ppm) for residues of the fungicide fosetyl-al (aluminum tris (O-ethyl phosphonate)) in or on the brassica crop grouping (broccoli, brussels sprouts, cabbage, Chinese broccoli, bok choy, napa cabbage, Chinese mustard, cauliflower, collards, kale, kohlrabi, mustard greens, and rape greens). The amended petition proposes a tolerance of 55 ppm. The analytical method used is flame photometric gas chromatography.

Authority: 21 U.S.C. 346a and 348.

Dated: January 6, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–1075 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00313; FRL–4007–5]

Disclosure of Names of Pesticide Product Inert Ingredients; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a revised list of pesticide product inert ingredients and their Chemical Abstract Service (CAS) numbers. This list updates the list announced in the **Federal Register** of August 17, 1990 (55 FR 33762).

ADDRESSES: A copy of the list may be obtained in person at rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., or by calling the EPA Office of Pesticide Programs Public Docket at (703) 305–5805, or by writing to: Freedom of Information Officer (A–101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lawrence, Chief, Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5805.

Dated: January 7, 1992.

Judy K. Heckman,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 92–940 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–F

[PF-557; FRL-4008-6]

Rhone Poulenc Ag Co.; Notice of Filing of Pesticide Petition for Thiodicarb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rhone Poulenc Ag Co. a pesticide petition (PP 6F3417) requesting the establishment of tolerances for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[[(methylimino) carbonyl]oxy]][ethanimidothioate]) and its metabolite methomyl (S-methyl *N*-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodities (RACs) broccoli, cabbage, and cauliflower. This petition was originally submitted by Union Carbide Agricultural Products Co. to establish a maximum permissible level for residues of the insecticide in or on the RACs almond hulls, broccoli, cabbage, cauliflower, and head lettuce. Union Carbide was later acquired by the Rhone Poulenc Ag Co., and the petitioner subsequently withdrew the requests for almonds and head lettuce.

ADDRESSES: By mail, submit written comments identified by the document control number, [PF-557], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM-19), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6386.

SUPPLEMENTARY INFORMATION: This notice announces that EPA received from the Union Carbide Agricultural Products Co., T.W. Alexander Drive, Research Triangel Park, NC 27709, a pesticide petition (PP 6F3417) proposing to amend 40 CFR part 180 by establishing a permanent tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for residues of the insecticide thiodicarb and its metabolite methomyl (S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodities almond nutmeat at 2.0 parts per million (ppm), almond hulls at 50.0 ppm; broccoli, cabbage, and cauliflower at 7.0 ppm; and head lettuce at 25.0 ppm. Union Carbide was later acquired by the Rhone Poulenc Ag Co. The petitioner subsequently amended the petition by withdrawing the tolerance request for almonds and head lettuce. The analytical methods used are gas chromatography with a flame photometric detector selective for sulfur containing compounds and gas chromatography/mass spectrometry.

Authority: 21 U.S.C. 346a and 348.

Dated: December 23, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-1076 Filed 1-14-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4093-1]

Labat-Anderson, Inc.; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Labat-Anderson, Incorporated of Arlington, Virginia, for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 186 (EPCRA), also known as title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Specifically, access concerns trade secrecy claims by industry under sections 303, 311, 312, and 313.

DATES: Access to the trade secret information submitted to EPA will occur on January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Jones, Chemical Emergency Preparedness and Prevention Office (CEPPO), Office of Solid Waste and Emergency Response, OS-120, Environmental Protection Agency, rm. 3101B, 401 M St., SW., Washington DC 20460, Telephone: 202-260-8353.

SUPPLEMENTARY INFORMATION: Under title III, facilities must send trade secrecy claims regarding their section 303, 311, 312, and 313 submittals to EPA.

Under contract number 68-WO-0022, awarded to ICF Incorporated, Labat-Anderson, Incorporated under Subcontract No. EPA-89-03 will continue to assist the Chemical Emergency Preparedness and Prevention Office (Office of Solid Waste and Emergency Response) in receiving and processing the information submitted by industry. EPA has determined that Labat-Anderson, Incorporated will require access to trade secret information, and in so doing, Labat-Anderson, Incorporated will follow all required security procedures.

EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned title III sections that EPA will provide Labat-Anderson, Incorporated access to these trade secret materials. Upon termination of their contract, or prior to termination of their contract at EPA's request, Labat-Anderson, Incorporated will return all material to EPA.

EPA announced clearance to access to EPCRA trade secret information by Labat-Anderson, Incorporated in a notice published in the Federal Register of August 8, 1988. (53 FR No. 152). Pursuant to this notice, access to clearance to EPCRA trade secret information under this contract is extended and expected to expire on April 30, 1993.

Dated: January 8, 1992.

James L. Makris,

Director, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response.

[FR Doc. 92-1074 Filed 1-14-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-82038; FRL-4010-3]

Health and Safety Data Reporting; Availability of Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of guidance.

SUMMARY: This notice announces the availability of a guidance document

entitled "Questions and Answers: Applicability of the Toxic Substances Control Act (TSCA) Section 8(d) Model Health and Safety Data Reporting Rule (40 CFR part 716) to Modeling Studies." Any person wishing to comment on the guidance document may do so.

DATES: Written comments on the guidance document must be received by March 2, 1992.

ADDRESSES: Three copies of comments identified with the docket control number (OPPTS–82038) must be submitted to: TSCA Public Document Office (TS–793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. NE–G004, Washington, DC 20460.

A public record has been established and is available in the TSCA Public Docket Office at the above address from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. EB–545, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: The TSCA section 8(d) Model Health and Safety Data Reporting Rule (40 CFR part 716) sets forth requirements for the submission of lists and copies of health and safety studies on chemical substances and mixtures (substances) selected for priority consideration testing rules under section 4(a) of TSCA and on other substances for which EPA requires health and safety information. The rule requires manufacturers, importers, and processors to submit to EPA unpublished health and safety studies conducted on the substances listed at 40 CFR 716.120. Generally, any information or data that relates to, or bears on, the effects of a listed substance on health or the environment is considered a health and safety study (§ 716.3 - "health and safety study" definition). The purpose of the guidance document is to clarify the applicability of the TSCA section 8(d) Model Health and Safety Data Reporting Rule to modeling studies in which concentrations or quantities of a substance to which humans or the environment are likely to be exposed are estimated by applying mathematical models of chemical distribution, transport and/or fate to measured or estimated data on chemical releases, conditions of release, and relevant environmental conditions such as wind speed and direction. Copies of the guidance may be obtained at the address listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: January 7, 1992.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–1077 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 8, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0284.

Title: Section 94.25 (f), (g) and (i), filing of applications.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, businesses or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 25 responses; 0.5 hours average burden per response; 13 hours total annual burden.

Needs and Uses: Section 94.25 requires that applicants proposing new or modified microwave transmitting facilities in the vicinity of the National Radio Astronomy Observatory, Naval Radio Research Observatory, Table Mountain Radio Receiving Zone, or FCC monitoring stations, consult with those parties to avoid interference to those sites. The rule section enumerates threshold conditions which trigger the requirement that applicants notify these respective receiving sites of their proposal. This requirement is needed to preserve interference-free reception conditions necessary at these sites. The data is used by the appropriate agencies to determine if proposed operation would cause harmful interference to their respective radio receiving sites.

OMB Number: 3060–0291.

Title: Section 90.477, Interconnected systems.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, businesses or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,000 recordkeepers; 1 hour average burden per recordkeeper; 1,000 hours total annual burden.

Needs and Uses: This section allows private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station records and made available to participants in the sharing arrangement and the Commission upon request. This recordkeeping requirement (when the land stations involved are multiple licensed or shared) is mandated by the requirements set forth in 47 U.S.C. 332(c) regarding permissible interconnection methods in the private radio services. The information is used by the participating licensees to effect the required cost sharing.

OMB Number: 3060–0300.

Title: Section 94.107, Posting of station authorization and transmitter identification cards, plates, or signs.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 12,140 recordkeepers; .0014 hours average burden per recordkeeper; 17 hours total annual burden.

Needs and Uses: Section 94.107 requires the licensee to keep the original of each transmitter authorization posted or immediately available at the address at which station records are maintained, and to post or have a copy available of the transmitter authorization at the transmitter location. This information is used by field investigations personnel to determine if a transmitter is operating in conformance with its authorization.

Transmissions in the Microwave Radio Service (part 94) do not have to include their station identification. Absent the requirement for station identification, transmitters must have their station authorization posted nearby so that Commission field personnel, while investigating interference complaints, can verify that a particular transmitter is operating in conformance with the terms of its authorization. Absent this requirement, the solution of interference cases would be needlessly delayed.

OMB Number: 3060–0281.

Title: Section 90.651, Supplemental reports required of licensees authorized under this subpart.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Annually and on occasion reporting.

Estimated Annual Burden: 16,408 responses; 0.167 hours average burden per response; 2,740 hours total annual burden.

Needs and Uses: The radio facilities addressed in this subpart of the Rules are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. Other trunked system licensees must report the number of mobile units being served annually, and at the time of filing applications for renewal of licenses. The information is used by FCC personnel to prevent frequency hoarding. This is necessary to fulfill the Commission's responsibility to effectively manage the spectrum.

OMB Number: 3060–0272.

Title: Section 94.31, Supplemental information to be submitted with applications.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 4,300 responses; 2 hours average burden per response; 8,600 hours total annual burden.

Needs and Uses: Section 94.31 requires applicants for private operational-fixed microwave facilities to submit supplementary information with their applications for station authorization. Information required includes statements on proposed operational use of the frequencies requested, as well as a system diagram, and if relevant to the applicant's proposed use of the station, statements regarding developmental operation; operation at temporary locations, air navigation hazard information for high towers. This information is used to assure compliance with the Commission's allocation scheme for microwave frequencies. The data collected is used by FCC staff to determine if the grant of a particular application is in conformance with the Commission's rules. Absent this information, efficient use of the spectrum would be degraded as incompatible operations interfered with each other in radio operating environments ill-designed for the applicant's proposed operation. Compliance would be impossible to monitor including rules designed to minimize the hazard to civil aviation from high tower facilities near airports.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–1108 Filed 1–14–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–930–DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–930–DR), dated December 26, 1991, and related determinations.

DATES: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

Polk County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92–1063 Filed 1–14–92; 8:45 am]

BILLING CODE 6718–02–M

Advisory Committee of the National Earthquake Hazards Reduction Program (NEHRP); Open Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. section 10(a)(2)), announcement is made of the following committee meeting:

Name: National Earthquake Hazards Reduction Program (NEHRP) Advisory Committee.

Dates of Meeting: January 27–29, 1992.

Place: Marriott Suites, Alexandria, Virginia.

Time: January 27—9 a.m. to 9 p.m.; January 28—9 a.m. to 5:10 p.m.; January 29—9 a.m. to 12 noon.

Proposed Agenda: The Committee will discuss the topic of earthquake engineering and how it is addressed by NEHRP.

The meeting will be open to the public with approximately ten seats available on a first-come, first-served basis. All members of the public interested in attending the meeting should contact Brian Cowan at 202–646–2821.

Minutes of the meeting will be prepared by the Committee and will be available for public viewing at the Federal Emergency Management Agency, Office of Earthquakes and Natural Hazards, 500 C Street, SW., room 625, Washington, DC. Copies of the minutes will be available upon request 45 days after the meeting.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92–932 Filed 1–14–92; 8:45 am]

BILLING CODE 6718–01–M

U.S. Fire Administration, Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of Meeting: February 2–3, 1992.

Place: National Emergency Training Center, National Fire Academy, G Building, Conference Room, Emmitsburg, Maryland.

Time: February 2 12 noon–5 p.m. (Quarterly Meeting). February 3 a.m.—Agenda Completion.

Proposed Agenda: Old Business, New Business, On-Campus Program Survey.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1117) on or before January 31, 1992.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Administrator's Office, U.S. Fire Administration, Federal Emergency Management Agency, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 10, 1991.

Olin L. Greene,

U.S. Fire Administrator.

[FR Doc. 92–935 Filed 1–14–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Gordon M. Dobberstein; Change In Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gordon M. Dobberstein, Gary, Minnesota; to acquire an additional 19.02 percent of the voting shares of Oppegard Agency, Inc., Moorhead, Minnesota, for a total of 29.83 percent.

Board of Governors of the Federal Reserve System, January 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–1003 Filed 1–14–92; 8:45 am]

BILLING CODE 6210–01–F

Mid-Missouri Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 5, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mid-Missouri Bancshares, Inc., Nevada, Missouri; to acquire 100 percent of the voting shares of Tri-County State Bank, El Dorado Springs, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. CBH, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Charter National Bank-Colonial, Houston, Texas, and Charter National Bank-Houston, Houston, Texas.

2. Minden Bancshares, Inc., Minden, Louisiana; to merge with Webster Bancshares, Inc., Minden, Louisiana, and thereby indirectly acquire Webster Bank & Trust Company, Minden, Louisiana.

Board of Governors of the Federal Reserve System, January 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–1004 Filed 1–14–92; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[FILE No. 891–0048]

Debes Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, six Rockford, Illinois-area nursing homes and two corporations that own and operate nursing homes from entering into agreements to boycott temporary nurse registries or to fix prices charged by such registries. In addition, the order would prohibit, for ten years, any agreement with any other respondent to purchase or use the services of any particular temporary nurse registry.

DATES: Comments must be received on or before March 16, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353–4423.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of Debes

Corporation, a corporation, Alama Nelson Manor, Inc., a corporation, Park Strathmoor Corporation, a corporation, Beverly Enterprises, Inc., a corporation, and its subsidiary, Beverly Enterprises—Illinois, Inc., Fairview Plaza Limited Partnership, a limited partnership, doing business as Fairview Plaza Nursing Home, The Neighbors, Inc., a corporation, and Yorkdale Health Center, Inc., a corporation (hereinafter sometimes referred to as "Debes," "Alma Nelson," "Park Strathmoor," "Beverly," "Beverly-Illinois," "Fairview Plaza," "Neighbors" and "Yorkdale" respectively, or as "proposed respondents," collectively), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondents and their duly authorized attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents are corporations or partnerships organized, existing, and doing business under and by virtue of the laws of the States of Illinois, Delaware or California, with their offices and principal places of business located at the addresses listed below.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law:

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the pubic record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this order, the following definitions shall apply:

(A) *Person* means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

(B) *Debes* means the Debes Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 6122 Mulford Village Drive, Rockford, Illinois 61107, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(C) *Park Strathmoor* means Park Strathmoor Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 5668 Strathmoor, Rockford, Illinois 61107, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(D) *Alma Nelson* means Alma Nelson Manor, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 550 S. Mulford Rd., Rockford, Illinois 61107, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(E) *Beverly* means Beverly Enterprises, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 155 Central Shopping Center, Fort Smith, Arkansas 72903, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(F) *Beverly-Illinois* means Beverly Enterprises—Illinois, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office located at 155 Central Shopping Center, Fort Smith, Arkansas 72903, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(G) *Neighbors* means The Neighbors, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 811 W. Second, P.O. Box 585, Byron, Illinois 61010, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(H) *Fairview Plaza* means the Fairview Plaza Limited Partnership, doing business as the Fairview Plaza Nursing Home, a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 321 Arnold, Rockford, Illinois 61108, and its principal office located at 6600 N. Lincoln Ave., suite 300, Lincolnwood, Illinois 60645, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(I) *Yorkdale* means Yorkdale Health Center, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 2313 N. Rockton Ave., Rockford, Illinois 61103, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(J) *Temporary nurses registry* means any person that supplies nursing personnel on a temporary basis.

(K) *The Rockford area* means the counties of Winnebago, Boone, and Ogle in the State of Illinois.

II.

It is ordered that each respondent shall forthwith, directly, indirectly, or through any corporate, or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, cease and desist from:

A. Entering into, attempting to enter into, organizing, adhering to or maintaining any agreement, understanding, or program with any other purchaser or user of nursing services to:

1. Refuse, or threaten to refuse, to use the services of any temporary nurses registry; or

2. Fix, stabilize, or otherwise interfere or tamper with the prices charged by any temporary nurses registry;

B. For a period of five (5) years after the date this order becomes final, communicating to any other respondent any information concerning its own or any other nursing home's intention or decision to use, refuse to use, to threaten to refuse to use the services of any temporary nurses registry for any nursing home in the Rockford area.

C. For a period of ten (10) years after the date this order becomes final, agreeing with any other respondent to purchase or use the services of a particular temporary nurses registry or of a particular group of temporary nurses registries.

III.

Provided, however, that this order shall not prohibit any agreement solely between any individual respondent and any entity or entities that control or are controlled by that respondent;

Provided further, that section II (A) and (B) of this order shall not be construed to prohibit respondents from entering any agreement that is reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws, except a joint venture prohibited by Section II(C) of this order; and

Provided further, that as to respondent Beverly Enterprises, Inc., this order shall apply only to conduct or practices in or affecting the sale of temporary nurses' services to nursing home facilities in the State of Illinois.

IV.

It is further ordered that each respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order to:

1. Each of its directors and officers or, in the case of Fairview Plaza, general partners, and to each of its nursing home administrators and directors of nursing employed by facilities in the Rockford area;

2. The Illinois Health Care Association, the Rockford Chapter of the Illinois Health Care Association, the Extended Care Nursing Association and every member of the Directors of Nursing Council of the Illinois Health Care Association;

3. Each temporary nurses registry from which it has purchased services for any nursing home facility located in the Rockford area since January 1988.

B. Within sixty (60) days after this order becomes final, and annually thereafter for a period of three (3) years on the anniversary date on which this order becomes final, and at any time the Commission, by written notice, may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order.

C. Notifying the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent that may affect its compliance obligations arising out of this order.

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, five identical agreements from eight proposed respondents to proposed consent orders. The agreements are from: (1) Debes Corporation, Alma Nelson Manor, Inc., and the Park Strathmoor Corporation; (2) Beverly Enterprises, Inc., and its subsidiary, Beverly Enterprises—Illinois, Inc.; (3) Fairview Plaza Limited partnership, a limited partnership, doing business as Fairview Plaza Nursing Home; (4) The Neighbors, Inc.; and (5) Yorkdale Health Center, Inc.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Complaints

Complaints prepared for issuance along with the proposed orders allege that the proposed respondents have violated Section 5 of the Federal Trade Commission Act by combining or conspiring with each other to conduct a boycott of a nurses registry in the Rockford area. ("The Rockford area" means the counties of Winnebago, Boone, and Ogle in the State of Illinois.) The complaints also allege the proposed respondents threatened to boycott other registries operating in the Rockford area and otherwise attempted to restrain competition among themselves in the hiring of temporary Certified Nursing Assistants, known as CNA's.

All of the proposed respondents are, or have been, engaged in the business of owning or operating nursing homes, also known as long-term health care facilities, within the Rockford area. Except to the extent that competition has been restrained as alleged in the complaints, the respondents have been and, with the exception of Beverly Enterprises—Illinois, Inc. are now in competition among themselves and with other providers of nursing home services in the Rockford area.

Nurses registries, sometimes referred to as "temporary nurses registries" or "nursing pools" supply nursing personnel such as RN's (Registered Nurses), LPN's (Licensed Practical Nurses), and CNA's (Certified Nursing Assistants) on a temporary basis to nursing homes. Absent restraints on competition, nurses registries compete among themselves to provide temporary nursing services at the price and quality nursing homes desire. Competition among nursing homes for temporary nursing services ensures an adequate supply of quality nurses.

The proposed complaints allege that in October 1988, one of the nurses registries serving the Rockford area, the Alpha Christian Registry ("Alpha Christian"), announced a substantial increase in its prices to nursing homes for temporary CNA services. The proposed respondents discussed the new Alpha Christian prices and the prices of the other nurses registries in the Rockford area at meetings

throughout November and December 1988. The proposed respondents agreed to and did send letters to Alpha Christian stating that they would not use Alpha Christian temporary CNA's due to excessive prices. The proposed respondents also did in fact cease using temporary CNA's supplied by Alpha Christian. After boycotting Alpha Christian, the proposed respondents further conspired to threaten to boycott the other registries in the Rockford area, and they communicated this threat by sending copies of the letter they had sent to Alpha Christian to the other registries.

The complaints also allege that the proposed Respondents' conspiracy to eliminate competition among the nursing homes for temporary CNA services has had the following effects, among others:

A. Restricting the supply of quality CNA services by depressing the price of such services;

B. Interfering in the process by which individual providers of temporary CNA services make independent decisions regarding the price of such services; and

C. Limiting consumers' access to the price and quality of nursing services they desire.

The Proposed Consent Order

The proposed order would prohibit each proposed respondent from entering into, attempting to enter into, organizing, adhering to or maintaining any agreement, understanding, or program with any other purchaser or user of nursing personnel services to:

1. Refuse, or threaten to refuse, to use the services of any temporary nurses registry; or

2. Fix, stabilize, or otherwise interfere or tamper with the prices charged by temporary nurses registries.

Except for a joint venture prohibited by the proposed order, the proposed respondents are not prohibited by the order from engaging in any conduct or entering any agreement that is ancillary to and reasonably necessary for the formation or operation of a joint venture that would otherwise be lawful under the antitrust laws.

The proposed order also prohibits, for five (5) years, each proposed respondent from communicating to any other respondent any information concerning its own or any other nursing home's intention or decision to refuse or to threaten to refuse to use the services of any temporary nurses registry at any nursing home in the Rockford area.

Under the proposed order each respondent shall, for a period of ten (10) years, cease and desist from agreeing with any other respondent to purchase or use the services of a particular temporary nurses registry or of a particular group of temporary nurses registries. The order, however, does not prohibit agreements between any individual respondent and any entity or entities that control or are controlled by that respondent. And, with regard to Beverly Enterprises, Inc., the order applies only to its conduct or practices in or affecting the sale of temporary nurses' services to nursing home facilities in the State of Illinois.

The order also requires each respondent to distribute a copy of the complaint and order to each of respondent's directors, officers or general partners and to each of its nursing home administrators and directors of nursing employed by respondents at facilities in the Rockford area. The proposed respondents must also distribute copies of the complaint and order to each temporary nurses registry from which it has purchased services, since January 1988, for any of respondents' facilities located in the Rockford area. In addition, copies of the complaint and order must be distributed to the Illinois Health Care Association, the Rockford Chapter of the Illinois Health Care Association, the Extended Care Nursing Association and each member of the Directors of Nursing Council of the Illinois Health Care Association.

The order also requires each respondent to file a compliance report within sixty (60) days after the order becomes final, and annually thereafter for a period of three (3) years and at any time the Commission, by written notice, may require. Each respondent would also be required to notify the Commission at least thirty (30) days prior to any proposed change in itself such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent that may affect its compliance obligations arising out of this order.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 92-1034 Filed 1-14-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 911-0110]

Mannesmann, A.G.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, a German company to acquire Rapistan Corp., but would require the respondent to divest the Buschman Co. within 12 months to a Commission approved buyer, and to hold separate the assets in the interim. If the divestiture is not completed within 12 months, the Commission would appoint a trustee to complete the divestiture. In addition, respondent would be required for 10 years to obtain Commission approval prior to acquiring any business that manufactures and sells in the United States certain conveyor systems.

DATES: Comments must be received on or before March 16, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St., & Pa. Ave., NW., Wash., DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann Malester or Michael Moiseyev, FTC/S-2308, Washington, DC 20580. (202) 326-2582 or 326-3106.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Mannesmann, A.G. of substantially all of the assets of Rapistan Corp. ("Rapistan"), a wholly owned subsidiary of Lear Siegler Holdings Corp. ("LSH"), and it now appearing that Mannesmann,

A.G., hereinafter sometimes referred to as "proposed respondent" or "Mannesmann", is willing to enter into an Agreement Containing Consent Order ("agreement") to divest all, or substantially all, assets and the whole of the share capital of The Buschman Company ("Buschman"), to cease and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and between Mannesmann, by its duly authorized officer and its attorneys, and counsel for the Commission That:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business at Mannesmannufer 2, Postfach 55 01, 4000 Dusseldorf, 1, F.R. Germany. Mannesmann's wholly owned subsidiary, Mannesmann Capital Corporation ("MCC"), is a corporation organized, existing, and doing business under and by virtue of the laws of New York, with its office and principal place of business at 450 Park Avenue, 24th, Floor., New York, New York 10022. MCC does business in the United States.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint hereto attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint hereto attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint hereto attached, its decision containing the following order to divest and cease and desist, and for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the agreement or the order may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order, the following definitions shall apply:

a. *Mannesmann* means Mannesmann, A.G., its predecessors, successors and assigns, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Mannesmann A.G. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, Mannesmann A.G. controls, directly or indirectly, and their respective successors and assigns.

B. *Acquisition* means the acquisition by MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly owned subsidiary of MCC, of substantially all of the assets of Rapistan Corp., a wholly-owned subsidiary of Lear Siegler Holdings Corp.

C. *The Buschman assets* means all of the share capital and all, or substantially all, of the assets of The Buschman Company, a wholly owned subsidiary of MCC.

D. *Conveyor systems* means high speed, light-to-medium duty unit handling roller and belt conveyors for distribution end uses that transport, convey, divert, scan and sort cartons, each of which generally weighs no more than 75 pounds, at a rate of speed of no less than 80 cartons per minute.

II

It is ordered That:

A. Within twelve (12) months of the date this order becomes final, Mannesmann shall divest, absolutely and in good faith, the Buschman assets.

B. Mannesmann shall divest the Buschman assets only to an acquirer or acquirers that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission which approvals shall not unreasonably be withheld. The purpose of the divestiture of the Buschman assets is to ensure the continuation of the Buschman assets as an ongoing, viable enterprise and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Mannesmann shall comply with all terms of the Hold Separate Agreement ("Hold Separate"), attached hereto and made a part hereof as appendix I. Said Hold Separate shall continue to be in effect until such time as the Hold Separate provides.

D. Mannesmann shall take such action as is necessary and reasonable to maintain the viability and marketability of the Buschman assets and shall not cause or permit destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered That

A. If Mannesmann has not divested, absolutely and in good faith and with the Commission's prior approval, the Buschman assets as required by paragraph II of this agreement, Mannesmann shall consent to the appointment by the Commission of a trustee to divest the Buschman assets. In

the event the Commission or the Attorney General brings an action pursuant to section 5 (*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*), or any other statute enforced by the Commission, Mannesmann shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Mannesmann to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, Mannesmann shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Mannesmann, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Buschman assets.

3. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission or by the court (in the case of a court-appointed trustee). Provided, however, the Commission may only extend the trustee's divestiture period one time for such reasonable time as the trustee may request, not to exceed one (1) additional year.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Buschman assets, or any other relevant information as the trustee may reasonably request. Mannesmann shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Mannesmann shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Mannesmann shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Mannesmann's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II.B of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each prospective acquirer of the Buschman assets. The divestiture shall be made in the manner set out in paragraph II; provided, however, if the trustee receives bona fide offers from more than one prospective acquirer or acquirers, and if the Commission approves more than one such proposed acquirer, the trustee shall divest to the acquirer selected by Mannesmann from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Mannesmann, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Mannesmann, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Mannesmann and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Buschman assets.

7. Mannesmann shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission or, in the case of a court-appointed trustee, of the court, Mannesmann shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture in accordance with this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture in accordance with this order.

11. The trustees shall have no obligation or authority to operate or maintain the Buschman assets.

12. The trustee shall report in writing to Mannesmann and to the Commission every thirty (30) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Mannesmann has fully complied with the provisions of paragraphs II and III of this order, Mannesmann shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Mannesmann shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture, including the identity of all parties contacted. Mannesmann also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V

It is further ordered That, for a period commencing on the date this order becomes final, and continuing for ten (10) years, Mannesmann shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, any interest in, assets of, or the whole or any part of the stock or share capital of, any person or business that is engaged in the manufacture and sale in the United States of conveyor systems. One year from the date this order becomes final and annually

thereafter for nine years on the anniversary date of this order, Mannesmann shall file with the Secretary of the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI

It is further ordered That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets located in the United States, engaged in the manufacture or sale of conveyor systems (hereinafter "acquired entity"), Mannesmann announces its intention to acquire or commences an acquisition of, any interest in the acquired entity and, before Mannesmann obtains sufficient control of the acquired entity to prevent an acquisition by the acquired entity, such acquired entity acquires any of the outstanding stock or share capital of, or any other interest in assets used for the manufacture and sale of conveyor systems (hereinafter "third entity"), or said acquired entity acquires any assets used in the manufacture and sale of conveyor systems, if approval of such acquisition would be required pursuant to paragraph V, Mannesmann may, in lieu of obtaining prior approval of such acquisition under paragraph V in this order, comply with each of the requirements of this paragraph VI of this agreement. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to paragraph V, Mannesmann shall:

(A) Notify the Commission as soon as practicable, and in any event, within three (3) days of Mannesmann's learning of the acquisition by the acquired entity of any interest in a third entity, as described in paragraph VI of this order. Such notification shall follow the format for filings set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR parts 801, 802, 803.

(B) In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall comply with all terms of the Hold Separate, attached to this order and made a part hereof. Said Hold Separate shall take effect as soon as Mannesmann has sufficient control over the acquired entity to satisfy the terms of the Hold Separate and shall continue in effect until such time as Mannesmann has divested all the conveyor systems assets acquired by the acquired entity or until such other time as the Hold Separate provides. In the case where the acquired entity acquired stock or share capital of the third entity, as soon as Mannesmann has sufficient control over the acquired entity to do so, Mannesmann shall place all stock and share capital of the third entity in a non-voting trust until said stock or share capital is divested.

(C) Within three (3) months of the date when Mannesmann has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Mannesmann shall:

1. In the case where the acquired entity acquired stock or share capital of the third entity, divest, absolutely and in good faith, the stock or share capital of the third entity; or

2. In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, divest, absolutely and in good faith, all the conveyor systems assets of the acquired entity and also divest such additional ancillary assets and effect such arrangements that are necessary to assure the viability and competitiveness of the conveyor systems assets of the acquired entity.

(D) Mannesmann shall divest the stock or share capital of the third entity or the conveyor systems assets of the acquired entity only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall demonstrate the viability and competitiveness of the conveyor systems assets of the acquired entity in its application for approval of a proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of conveyor systems, and to remedy any lessening of competition resulting from the acquisition.

(E) In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall take such action as is necessary to maintain the viability, competitiveness and marketability of the conveyor systems assets of the acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

(F) If Mannesmann has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the third entity or the conveyor systems assets of the acquired entity within three (3) months of the date when Mannesmann has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Mannesmann shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the third entity; or

2. The conveyor systems assets of the acquired entity and to divest such additional ancillary assets of the acquired entity and effect such arrangements that may be necessary to assure the viability and competitiveness of the conveyor systems assets of the acquired entity.

(G) In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Mannesmann shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Mannesmann to comply with this order.

(H) If a trustee is appointed by the Commission or a court pursuant to paragraph VI.(F) of this order, Mannesmann shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in paragraph III.B. of this order. Provided, however, that each reference to "the Buschman assets" in paragraph III.B. of this order shall, for the purposes of this paragraph VI, mean either the "stock or share capital of the third entity" or the "conveyor systems assets of the acquired entity."

VII

It is further ordered That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Mannesmann made to MCC, Mannesmann shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Mannesmann relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Mannesmann, and without restraint or interference from Mannesmann, to interview officers or employees of Mannesmann, who may have counsel present, regarding such matters.

VIII

It is further ordered That Mannesmann shall notify the Commission at least thirty (30) days prior to any change that may affect compliance obligations arising out of the consent order, including but not limited to, any change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, and any other change.

Appendix I

Hold Separate Agreement

This Hold Separate Agreement ("Hold Separate") is by and among Mannesmann, A.G. ("Mannesmann" as defined in paragraph I of the proposed order), a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business at Mannesmann, 2, Postfach 55 01, 4000 Dusseldorf, 1, F.R. Germany; Mannesmann's wholly owned subsidiary, Mannesmann Capital Corporation ("MCC"), with its offices and principal place of business at 450 Park Avenue, 24th Floor, New York, N.Y. 10022, which does business in the United States; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "parties").

Premises

Whereas, on June 28, 1991, MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly-owned subsidiary of MCC, entered into an agreement of purchase and sale with Lear Siegler Holdings, Corp. ("LSH") to acquire substantially all of the assets of Rapistan Corp. ("Rapistan"), LSH's wholly-owned indirect subsidiary ("acquisition"); and

Whereas, Rapistan, with its principal office and place of business located at 507 Plymouth Avenue, NE., Grand Rapids, Michigan 49505, manufacturers and sells, among other things, conveyor systems, as defined in paragraph I of the proposed order; and

Whereas, The Buschman Company ("Buschman"), with its principal office and place of business located at 10045 International Boulevard, Cincinnati, Ohio 45246, manufacturers and sells, among other things, conveyor systems, as defined in paragraph I of the proposed order, and is a wholly owned subsidiary of MCC; and

Whereas, the Commission is now investigating the acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached agreement containing consent order ("agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of Mannesmann's conveyor systems, as defined in paragraph I of the proposed order, which it operates through Buschman, during the period prior to the final acceptance and issuance of the order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necesary to preserve the Commission's ability to require the divestiture of the Buschman assets, as defined in paragraph I of the proposed order, and the Commission's right to have Buschman continued as a viable competitor; and

Whereas, the purpose of the Hold Separate and the agreement is to:

1. Preserve Buschman as a viable, ongoing, independent manufacturer and supplier of conveyor systems, as defined in the order, pending divestiture of the Buschman assets as defined in paragraph I of the proposed order,

2. Remedy any anticompetitive effects of the Acquisition,

3. Preserve the Buschman assets as viable, ongoing assets engaged in the same business in which they are presently employed pending divestiture; and

Whereas, Mannesmann's entering into this Hold Separate shall in no way be construed as an admission by Mannesmann that the acquisition is illegal; and

Whereas, Mannesmann understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this agreement.

Now, therefore, the parties agree, upon the understanding that the commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent agreement, it will not seek further relief from Mannesmann with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this hold separate and the agreement to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of Buschman pursuant to the agreement, as follows:

1. Mannesmann agrees to execute and be bound by the attached agreement.

2. Mannesmann agrees that from the date this Hold Separate is accepted until the earlier of the dates listed below in subparagraphs 2(a) through 2(c), it will comply with the provisions of this Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the consent agreement pursuant to the provisions of § 2.34 of the Commission's Rules;

b. 120 days after publication in the **Federal Register** of the proposed order, unless by that date the Commission has issued its order in disposition of this proceeding; or

c. The day after the divestiture obligations required by the proposed order have been satisfied.

3. Mannesmann currently operates Buschman as an indirect, wholly-owned subsidiary, and as a direct wholly-owned subsidiary of MCC. Buschman management reports to The Buschman Company Board of Directors ("Buschman Board"). The Buschman Board is a five member body which consists of the following individuals: Michael D. Green, John Slater, Klaus Kirchesch, Dr. Helmut Noack, and Wolfgang Vogl. Dr. Helmut Noack and Wolfgang Vogl are current Mannesmann Demag A.G. officers having direct operational responsibility for Mannesmann's worldwide belt and roller conveyor business, and they will have responsibility for the operation of the Rapistan assets once the acquisition has been completed. Therefore, in order to ensure the complete independence and viability of Buschman and to assure that no competitive information is exchanged between Buschman and any of the other conveyor operations of Mannesmann, Mannesmann will hold Buschman's assets and businesses separate and apart on the following terms and conditions:

a. Buschman, as it is presently constituted, shall be held separate and apart and shall be operated independently of Mannesmann (meaning here and hereinafter, Mannesmann excluding Buschman); provided however that Mannesmann may exercise only such direction and control over Buschman as is necessary to assure compliance with this Hold Separate, agreement, and order.

b. Mannesmann shall not exercise direction or control over, or influence directly or indirectly, Buschman or any of its operations or businesses; provided, however, that Mannesmann may exercise only such direction and control over Buschman as is necessary to assure compliance with this Hold Separate, agreement, and order.

c. Mannesmann shall take such action as is necessary and reasonable to maintain the viability and marketability of the Buschman assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary

course of business and except for ordinary wear and tear.

d. Within five (5) days of the date this Hold Separate is accepted by the Commission, Mannesmann shall remove Dr. Helmut Noack and Wolfgang Vogl from the Buschman Board and appoint Johann Lottner, Director of the accounting department for Mannesmann Demag, and John P. Dunn, a partner with Jones, Day, Reavis & Pogue, neither of whom have any present responsibilities for the management of any of Mannesmann's conveyor systems business in any part of the world. Each Buschman Board member, who is also a director, officer, employee, agent, or representative of Mannesmann, shall enter into a confidentiality agreement with Mannesmann agreeing to be bound by the terms and conditions of appendix A, appended hereto.

e. The Buschman Board shall have exclusive authority for managing Buschman.

f. The individuals on the Buschman Board shall not be involved in any way in the marketing, selling, manufacturing, or management of Rapistan, or any other business of Mannesmann involved in the marketing, selling, manufacturing, or management of conveyor assets. Each of these individuals, the management of Buschman, and Mannesmann's directors, officers, or employees responsible for the operation or management of Rapistan and all other Mannesmann conveyor assets will receive the notification attached as appendix A hereto.

g. If necessary to assure compliance with the terms of this Hold Separate, the agreement, and the order, Mannesmann may, but is not required to, assign an individual to Buschman for the purpose of overseeing such compliance ("on-site person"). The on-site person shall have access to all officers and employees of Buschman and such records of Buschman as he deems necessary and reasonable to assure compliance. Such individual shall enter into a confidentiality agreement with Mannesmann agreeing to be bound by the terms and conditions of appendix A, appended hereto.

h. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest assets, Mannesmann shall not receive or have access to, or the use of, any material confidential information about Buschman or the activities of the Buschman Board in managing the business that is not in the public domain. Nor shall the Buschman Board, any individual member of the Buschman Board, or the on-site person receive or have access to, or the use of, any material confidential information about Mannesmann's conveyor assets or related businesses or activities not in the public domain. MCC may receive on a regular basis from Buschman aggregate financial information necessary and essential to allow MCC to prepare United States consolidated financial reports, tax returns, and personnel reports. Such information, when consolidated with data from other United States operations of Mannesmann by MCC, may be made available to Mannesmann. "Material confidential information," as used herein, means competitively sensitive or proprietary information, not independently known to Mannesmann from sources other than the Buschman Board and includes, but is not limited to, customer lists, price lists, bidding lists, marketing methods, marketing plans, sales plans, long range planning documents, patents, technologies, processes, or other trade secrets.

(i) Except as required by subparagraph (d) above, Mannesmann shall not remove or replace any member of the Buschman Board, or the on-site person except as provided below:

(i) Mannesmann may remove and replace anyone for cause, death, disability, or resignation from service with Mannesmann;

(ii) Mannesmann may remove any member of the Buschman Board if a conflict of interest develops in that member's role as a potential purchaser of the Buschman Assets and that role as a manager of Buschman;

(iii) Subject to the requirements of paragraph 3 of the Hold Separate, Mannesmann may replace any member of the Buschman Board or officer of Buschman after providing the Commission with sixty (60) days advance written notice; and

(iv) Mannesmann may remove any individual who interferes in any way with Mannesmann's ability to comply with the terms of this Hold Separate, the agreement, or the order.

Provided, however, that each individual newly appointed to the Buschman Board, pursuant to this subparagraph must conform to all terms and condition of this Hold Separate.

(j) All earnings and profits of Buschman shall be retained separately in Buschman pending divestiture. Mannesmann shall provide Buschman with sufficient working capital to operate at the current rate of operation.

(k) Should the Commission seek in any proceeding to compel Mannesmann to divest itself of the Buschman assets as defined in the proposed order, Mannesmann shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the acquisition. Mannesmann also waives all rights to contest the validity of this Hold Separate.

4. To the extent that this Hold Separate or agreement requires Mannesmann to take, or prohibit Mannesmann from taking, certain actions which otherwise may be required or prohibited by contract, Mannesmann shall abide by the terms of the Hold Separate or order and shall not assert as a defense such contract requirements in a civil penalty action or any other action brought by the Commission to enforce the terms of this Hold Separate or order.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Mannesmann made to MCC, its principal office in the United States, Mannesmann shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office of hours of Mannesmann and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Mannesmann relating to compliance with this Hold Separate;

(b) Upon five (5) days notice to Mannesmann, and without restraint or interference from Mannesmann, to interview officers or employees of Mannesmann, who may have counsel present, regarding any such matters.

6. This Hold Separate shall not be binding until approved by the Commission.

Appendix A

Notice of Divestiture and Requirement for Confidentiality

Mannesmann, A.G., ("Mannesmann") has entered into a Consent Agreement and Hold Separate Agreement with the Federal Trade Commission relating to the Divestiture of its subsidiary, The Buschman Company ("Buschman"). Until after the Commission's Order becomes final and Buschman is divested, it must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of Mannesmann. All competitive information relating to Buschman must be retained and maintained by the persons responsible for the management of Buschman (including the Buschman Board of Directors) on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any competing Mannesmann business, including the operations of Rapistan Corp. Similarly, all such persons responsible for the management of Mannesmann's competing businesses shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such businesses to or with any person responsible for Buschman.

Any violation of the consent Agreement or the Hold Separate Agreement, incorporated by reference as part of the Consent Order, subjects the violator to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an Agreement containing a proposed Consent Order from Mannesmann, A.G.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The proposed Complaint alleges that Mannesmann's acquisition of the assets of Rapistan Corp., from Lear Siegler Holdings Corp., would acquire a dominant position that would result in violation of section 7 of the Clayton Act in the market for the manufacture and sale of high speed, light to medium duty, unit handling conveyor systems for use in warehouse distribution. It also alleges that the relevant geographic market is the United States and that this market is highly concentrated and that entry into this market is extremely difficult. It alleges that as a result of the acquisition, competition between Mannesmann and Rapistan would be eliminated and the acquisition would result in a highly-concentrated relevant market, and the likelihood of collusion in that market would be greatly increased.

The proposed Agreement and Order provides that Mannesmann may acquire the Rapistan assets, but it must divest either the voting securities or the assets of its indirect wholly owned subsidiary, The Buschman Company, to a third party approved in advance by the Commission within twelve (12) months. If the divestiture is not completed within twelve (12) months, the Commission will appoint a trustee to complete the divestiture. It also provides that for a period of ten years, Mannesmann may not acquire any interest in any other firm in the relevant market without prior approval from the Commission.

The anticipated competitive effect of the proposed Order will be to assure that competition will continue in the United States market for the manufacture and sale of high speed, light to medium duty, unit handling conveyor systems for use in warehouse distribution.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Deborah K. Owen in the Matter of Mannesmann AG/Rapistan

[File No. 911-0110]

Based on the evidence available to the Commission in this matter, I have concurred in the decision to accept this consent agreement for public comment. It appears that a combination of the two parties in the market alleged in the complaint could facilitate anticompetitive price discrimination against certain customers.

[FR Doc. 92-1035 Filed 1-14-92; 8:45 am]
BILLING CODE 6750-01-M

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On March 26, 1991 (56 FR 12533), the Commission published a request for public comment on a petition for exemption from the requirements of its trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" that had been filed by Mercedes-Benz of North America, Inc. The Commission now grants the petition and determines that the provisions of 16 CFR part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by Mercedes-Benz.

EFFECTIVE DATE: January 15, 1991.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Attorney, PC-H-238, Federal Trade Commission, Washington, DC 20580. (202) 326-2970.

SUPPLEMENTARY INFORMATION:

Order Granting Exemption

In the Matter of a Petition for Exemption from the Trade Regulation Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" filed by Mercedes-Benz of North America, Inc. (MBNA).

On March 26, 1991, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by MBNA. MBNA is a wholly owned subsidiary of the Daimler-Benz group, the sole authorized U.S. importer and distributor of vehicles and parts manufactured by Mercedes-Benz Aktiengesellschaft of Stuttgart, Germany. The petition sought an exemption, pursuant to section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures."

In accordance with section 18(g), the Commission conducted an exemption proceeding under section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and invited public comment during a 60-day period ending May 28, 1991. After reviewing the petition and the comments received, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is "necessary to prevent the unfair or deceptive act or practice to which the rule relates." If not, an exemption is warranted.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor with a relative lack of business experience and sophistication;

(2) Inadequate time for the investor to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance in which the franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The pre-sale disclosures required by the Franchise Rule are designed to negate the effect of any deceptive acts or practices where these conditions are present. The Rule provides investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus to protect themselves from deception.

Where the conditions that create a potential for deception in the sale of franchises are not present, however, a regulatory remedy designed to prevent deception is unnecessary. Our review of the record in this proceeding persuades us that an exemption is warranted for that reason. The Petitioner has shown that the conditions that create a potential for abuse are absent, and that there is no likelihood of a pattern or practice of unfair or deceptive acts or practices in the appointment of its automobile dealership franchises for that reason.

The petition and public comment demonstrate that potential Mercedes-Benz dealers are and will continue to be a select group of highly sophisticated and experienced businessmen and women; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing. We note in

particular that Mercedes-Benz maintains only about 400 dealers in the U.S.; that it grants fewer than 25 new dealerships a year, most resulting from the sale by existing dealers of their dealerships; that prospective Mercedes-Benz dealers typically are established dealers for other automobile manufacturers or importers; that total Mercedes-Benz dealership investments range from $1 million to $25 million; and that applicants participate in a two- to three-month approval process that includes extensive information gathering and exchange by the parties.

As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits. The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the licensing of motor vehicle dealership franchises on four prior occasions since 1980, and found no evidence or likelihood of a significant pattern or practice of abuse by any of the Petitioners. If any such evidence exists, it has not yet been brought to the Commission's attention in this or any of the prior proceedings.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions for automobile dealerships support the conclusion that Petitioner's licensing of new dealers accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the licensing of dealerships, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's licensing of motor vehicle dealer franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

Accordingly, the Commission has determined that the provisions of 16 CFR part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by Mercedes-Benz of North America, Inc.

It is so ordered.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-1033 Filed 1-14-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-42]

Extension of Public Comment Period for Priority Data Needs for 38 Priority Hazardous Substances

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces an extension of the public comment period for the priority data needs for 38 priority hazardous substances. Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(i)), as amended by the Superfund Amendments and Reauthorization Act (Pub. L. 99-499), requires that ATSDR, in addition to other duties, must assure the initiation of a research program to fill identified data needs for certain hazardous substances.

ATSDR announced the identification of priority data needs for 38 priority hazardous substances in the **Federal Register** on October 17, 1991, (56 FR 52178) with a public comment period through January 15, 1992; a correction notice for this announcement was also published on November 25, 1991 (56 FR 59330). This notice announces an extension of the public comment period through March 2, 1992, in order to allow the public an additional 45 days to review and comment on the identified priority data needs.

DATES: Comments concerning the **Federal Register** notice of October 17, 1991 (56 FR 52178) must be received by March 2, 1992.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR-42 and should be submitted to the Research Implementation Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Research Implementation Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephone: 404-639-6015.

SUPPLEMENTARY INFORMATION: Administrative Record: ATSDR has established a public version of this record with materials pertaining to this notice (ATSDR docket control number-42). The public file is available for inspection during the times and at the address given in the **ADDRESSES** section of this notice.

Dated: January 9, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-1029 Filed 1-14-92; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Diesel Exhaust Exposure and Lung Cancer in Miners; Feasibility Study

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: A Feasibility Study of Diesel Exhaust Exposure and Lung Cancer in Miners.

Time and Date: 9 a.m.-12 noon, February 14, 1992.

Place: Hubert H. Humphrey Building, Conference Room 303-305A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an informational meeting to discuss the feasibility study being conducted by NIOSH and the National Cancer Institute, National Institutes of Health. The two primary purposes of the study are to determine:

(1) Whether an adequate number of salt, potash, limestone, and trona miners, who have been exposed to diesel equipment in an underground mine for at least one year, are available to conduct a statistically significant case-control study; and

(2) Whether or not work history data can be linked to possible exposure surrogates in order to develop individual exposure estimates.

The study protocol is available from the contact person. Comments will be accepted by letter until the time of the meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Frank J. Hearl,

NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 117, Morgantown, West Virginia 26505, telephone 304/291–4423 or FTS 923–4423.

Dated: January 9, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–1031 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–19–M

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Long-Term Care Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting:

Name: NCVHS Subcommittee on Long-Term Care Statistics.

Time and Date: 10 a.m.–4:30 p.m., February 4, 1992.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will discuss the NCHS long-term care data systems with program staff.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050 or FTS 436–7050.

Dated: January 9, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 92–1030 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9 a.m.–5 p.m., February 14, 1992.

Place: Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will devote primary attention to the issue of statistical data systems for emotionally disturbed children and adolescents. Particular attention will be given to data availability through health, juvenile justice, social services, and educational systems. The subcommittee will also consider developments in conceptualization of the seriously mentally ill population and proposals for the 1992 statistical publications for the National Institute of Mental Health, National Institutes of Health.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050 or FTS 436–7070.

Dated: January 9, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–1032 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91M–0507]

EDAP International Corp.; Premarket Approval of EDAP LT.01 Lithedap Shock Wave Lithotripter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by EDAP International Corp., Amherst, MA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the EDAP LT.01 Lithedap Shock Wave Lithotripter. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 12, 1991, of the approval of the application.

DATES: Petitions for administrative review by February 14, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1194.

SUPPLEMENTARY INFORMATION: On April 18, 1990, EDAP International Corp., Amherst, MA 01002, submitted to CDRH an application for premarket approval of the EDAP LT.01 Lithedap Shock Wave Lithotripter. The device is an extracorporeal shock wave lithotripter and is indicated for use in the fragmentation of urinary stones in the kidney, i.e., renal calyx stones and renal pelvis stones.

On April 4, 1991, the Gastroenterology-Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On December 12, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate

in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 14, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 8, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92-1097 Filed 1-14-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0512]

Diasonics, Inc.; Premarket Approval of Therasonic Lithotripsy Treatment System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Diasonics, Inc., Milpitas, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Therasonic Lithotripsy Treatment System. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 20, 1991, of the approval of the application.

DATES: Petitions for administrative review by February 14, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marsha Melvin, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1194.

SUPPLEMENTARY INFORMATION: On December 19, 1990, Diasonics, Inc., 1565 Barber Lane, Milpitas, CA 95035, submitted to CDRH an application for premarket approval of the Therasonic Lithotripsy Treatment System. The device is an extracorporeal shock wave lithotripter and is indicated for use in the treatment of both singular and multiple renal pelvic and renal calyceal stones where such stones are located within a depth of 12 centimeters from the skin line.

On April 4, 1991, the Gastroenterology-Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On December 20, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 14, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 9, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92-1099 Filed 1-14-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91M-0508]

Advanced Pulmonary Technologies, Inc., Premarket Approval of APT 1010 Ultrahigh Frequency Ventilator

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Advanced Pulmonary Technologies, Inc., Glastonbury, CT, for premarket approval, under section 515 of the Federal, Food, Drug, and Cosmetic Act (the act), of the APT 1010 Ultrahigh Frequency Ventilator. After reviewing the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 13, 1991, of the approval of the application.

DATES: Petitions for administrative review by February 14, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James E. Dillard, Center for Devices and Radiological Health (HF-454), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1053.

SUPPLEMENTARY INFORMATION: On December 5, 1990, Advanced Pulmonary Technologies, Inc., 50 Nye Rd., Glastonbury, CT, 06033–1280, submitted to CDRH an application for premarket approval of the APT 1010 Ultrahigh Frequency Ventilator (APT 1010). APT 1010 is indicated for use in ventilating critically ill patients where the patients are:

1. In the opinion of their physician failing conventional mechanical ventilation [1] therapy; and

2. Diagnosed as having adult respiratory distress syndrome (ARDS);[2] and

3. Age 14 years or older.

On March 20, 1991, the Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application with conditions. These conditions were met by the applicant following the recommendation of the panel.

On December 13, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 14, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d , 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 8, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92–1098 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

[1] Failing conventional mechanical ventilation is defined as meeting one of the following criteria: (a) require an FiO_2 greater than 0.70; (b) require and FiO_2 equal to 0.70 and have a PaO_2 less than 65 torr; (c) require a peak inspiratory airway pressure greater than 65 cm H_2O; or (d) require a level of positive end expiratory pressure greater than 15 cm H_2O.

[2] ARDS is defined as meeting all of the following criteria: (a) a shunt fraction (QS/QT) of at least 15 percent; (b) the presence of diffuse infiltrates as seen by x-ray; and (c) pulmonary capillary wedge pressure (PCW) <18 cm H_2O.

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the agenda of a meeting of the Arthritis Advisory Committee which is scheduled for January 23 and 24, 1992. This meeting was announced in the **Federal Register** of December 20, 1991 (56 FR 66038 at 66039). The change is being made to add an additional item for discussion. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Khairy W. Malek, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 20, 1991, FDA announced that a meeting of the Arthritis Advisory Committee would be held on January 23 and 24, 1992. On page 66039, column 1, the open committee discussion portion of the agenda is amended as follows:

Open committee discussion. On January 23, 1992, the committee will discuss investigational new drug application (IND) IND 31–135/new drug application (NDA) 20–202 for 8-methoxypsoralen/photopheresis for scleroderma (sponsors are Therakos and ICN/Viratek). In addition, the committee will be asked to discuss study design and analysis of treatments for scleroderma.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1021 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. February 3 and 4, 1992, 8:30 a.m., Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, February 3, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, February 4, 1992, 8:30 a.m. to 4:30 p.m.; John L. Gueriguian, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3490, Fax 301–443–9282.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of

marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 28, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 3, 1992, the meeting will be devoted to the presentation and discussion of state-of-the-art efficacy endpoints to be used for testing drugs for the treatment of benign prostatic hypertrophy (BPH), with the presence and participation of worldwide urological experts. The committee will address the following issues: (1) Changes in urodynamic parameters in patients with BPH, (2) efficacy criteria used in European and North American clinical trials with investigational anti-BPH drugs, (3) use of anti-BPH drugs in current clinical practice, and (4) the potential for masking prostatic cancers during anti-BPH therapy. On February 4, 1992, the committee will discuss the anti-BPH indication of Proscar® (finasteride), of Merck, Sharp & Dohme Research Laboratories.

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. February 13 and 14, 1992, 9 a.m., Grand Ballroom, Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD.

Type of meeting and contact person. Open public hearing, February 13, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open symposium, 10 a.m. to 5 p.m.; open public hearing, February 14, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open symposium 10 a.m. to 2:30 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in neurological diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee, Those desiring to make formal presentations should notify the contract person before February 3, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open symposium. A panel comprised to members of the committee, staff from the FDA Division of Neuropharmacological Drug Products, and a number of specially invited agency guests with expertise in the assessment of dementia and the care of demented patients will discuss the merits of comments received concerning the draft guidelines for the clinical evaluation of antidementia drugs that have been in circulation for comment since November 8, 1990. The subject matter for the panel's discussion will include, beyond comments on the guidelines previously submitted in writing, comments offered during the open public session immediately preceding the symposium. The open symposium will consist of two sessions. During the first session, the panel will review the comments received, evaluating their relevance and merits in regard to the section of the draft guidelines to which they apply. At the conclusion of the first session, the panel will be asked to identify those sections of the draft guidelines that in their collective judgment deserve substantive revision and/or modification. During the second session, the panel will discuss and make suggestions for modifying the sections of the guidelines so identified.

The first session of the symposium will follow the open hearing. To facilitate a systematic review of the comments and critiques received, the order of topics addressed by the panel during the first session will follow the organization of the draft guidelines. The duration of the first session is not intended to exceed 7 hours, and would, therefore, conclude by 5 p.m. on February 13, 1992. However, if, in the judgment of the chairperson, additional time is required, the first session may be continued into the evening of February 13, 1992, and/or extended into the morning of February 14, 1992.

Formal deliberative session of the committee. At the conclusion of the symposium, the committee will be asked to make a formal recommendation to the agency regarding the guidelines and their further development.

FDA public advisory committee meetings may have as many as four separable portions: (a) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents

per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1022 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, to be chaired by Donald W. Aird, Public Affairs Specialist. The topic to be discussed is food labeling reform.

DATES: Thursday, January 23, 1992, 7 p.m. to 9 p.m.

ADDRESSES: International Diabetes Center, Naegele Auditorium, Sixth Floor, 5000 West 39th St., St. Louis Park, MN 55416.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Public Affairs Specialist, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1023 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topic to be discussed is food labeling reform.

DATES: Tuesday, February 4, 1992, 10 a.m. to 12 m.

ADDRESSES: St. Louis County Extension, Washburn Hall, rm. 109, 2305 East Fifth St., Duluth, MN 55812.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Public Affairs Specialist, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1024 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Cosponsorship of the Great American Workout

AGENCY: President's Council on Physical Fitness and Sports, PHS, DHHS.

ACTION: Notice of opportunity for cosponsorship.

SUMMARY: The President's Council on Physical Fitness and Sports ("the Council") announces the opportunity for a non-profit organization to cosponsor with the Council the Great American Workout scheduled for May 1, 1992.

DATES: To receive consideration, requests to participate as a cosponsor must be received by the close of business January 30, 1992 by Matthew Guidry, Deputy Executive Director of the Council at the address below. Requests will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not be acceptable as proof of timely mailing. Hand delivered requests must be received by 5 p.m., January 30, 1992. Requests that are received after the deadline date will be returned to the sender.

FOR FURTHER INFORMATION CONTACT: Matthew Guidry, Deputy Executive Director, President's Council on Physical Fitness and Sports, suite 250, 701 Pennsylvania Avenue NW., Washington, DC 20004, (202) 272–3424.

SUPPLEMENTARY INFORMATION:

Background

The President's Council on Physical Fitness and Sports promotes and encourages the development of physical fitness and sports programs for all Americans. In 1990, as part of its agenda, the Council staged the first Great American Workout as a major event to focus on exercise. On May 1, 1990, the south lawn of the White House served as the backdrop of this fitness event for the Nation.

On May 1, 1991, the second Great American Workout took place. The focus of the event was on youth fitness and separate activities were conducted on the south lawn of the White House and at the west steps of the Capitol.

The third Great American Workout is scheduled to take place on May 1, 1992.

Requirements of Cosponsorship

The President's Council is seeking to cosponsor this year's Great American Workout with a nonprofit organization which has demonstrated ability and experience to coordinate this type of national event. This year's event will include workout stations at the south lawn of the White House and at the Capitol. The entity selected as cosponsor will be responsible for coordinating the Great American Workout with representatives of the White House, the Congress, the Architect of the Capitol, the Department of Health and Human Services and the President's Council. The duties of the cosponsor will include:

(1) Development of a publicity campaign for the event, including the printing of official brochures and invitations.

(2) Hotel and transportation arrangements for certain invitees.

(3) Planning and establishment of the workout stations at the White House and Capitol for the activity demonstrations.

(4) Planning, selection and organization of the activities.

(5) Planning, and coordinating the reception and breakfast arrangements.

(6) Providing insurance coverage and first aid stations.

(7) Obtaining corporate sponsors of the event.

Availability of Funds

There are no Federal funds available for the Great American Workout. It will be the function of the cosponsor to provide the necessary funds for the event.

Eligibility for Cosponsorship

To be eligible, a requester must be: (1) A private, nonprofit entity; and (2) an entity that by virtue of its nature and purpose has a legitimate interest in physical fitness and sports.

Content of Request for Cosponsorship

Each request for cosponsorship should contain: (1) A description of the organization and its capabilities; (2) a summary of the manner in which it would conduct the event and carry out its duties; and (3) its plan for arranging for the funding of the event.

Evaluation Criteria

The cosponsor will be selected by the President's Council based on the following evaluation criteria:

(1) Requester's qualifications and capability to conduct events of this nature; and

(2) The ability of the requester to arrange for the funding of the event.

Other Information

Prior to the selection of the cosponsor, the Council staff will meet separately with those requesters whose written submissions best meet the evaluation criteria. Since the Great American Workout involves events held on the grounds of the White House and the U.S. Capitol, certain restrictions apply to the commercial use of a cosponsor's source or sources of funding. The successful cosponsor will be required to enter into a memorandum of understanding with the Department of Health and Human Services setting forth the details of the event. In addition, agreements with other interested parties may be required.

Dated: January 10, 1992.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 92-1067 Filed 1-14-92; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

Family Self-Sufficiency

[Docket No. N-91-3286; FR-3063-C-03]

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA) for FY 1991; Technical correction to January 7, 1992 Notice.

SUMMARY: This document makes a technical correction to the notice concerning the Family Self-Sufficiency NOFA published in the Federal Register on January 7, 1992 (57 FR 577).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone number (202) 708-0477, or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 7, 1992 (56 FR 577), the Department published a notice in the Federal Register to correct the NOFA for the Public and Indian Housing Family Self-Sufficiency (FSS) Program for Fiscal Year 1991, which was published in the Federal Register on September 30, 1991 (56 FR 49604). The correction made by the January 7, 1992 notice only pertained to the Indian Housing portion of the September 30, 1991 NOFA.

In the January 7, 1992 notice, the Department extended the application deadline for all applicants responding to the Public and Indian Housing FSS NOFA published on September 30, 1991 at 56 FR 49604. In the January 7, 1992 notice, the Department also stated as follows:

> With reference to this deadline extension, applicants should note that, in a separate document as yet unpublished, the Department intends to notify applicants for Section 8 Incentive Award Rental Vouchers and Rental Certificates in connection with the Family Self-Sufficiency Program (a NOFA also published on September 30, 1991 (56 FR 49612)) that (1) FY 1991 and 1992 funding will be combined into a single funding round; and (2) the FY 1992 'Incentive Award' NOFA's application due date has been extended from January 10, 1992 to February 10, 1992. (Emphasis added)

Applicants should note that the "separate document" concerning the Section 8 Incentive Award NOFA was published in the Federal Register on January 3, 1992 at 57 FR 312-313.

Dated: January 9, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92-1002 Filed 1-14-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

White House Conference on Indian Education Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule of the forthcoming meeting of the White House Conference on Indian Education Advisory Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The White House Conference on Indian Education Advisory Committee is established by Public Law 100-297, part E. The Committee is established to assist and advise the Task Force in the planning and conducting the conference.

DATE, TIME AND PLACE: The Advisory Committee Meeting will be January 21, 1992, at 9 a.m. to 5 p.m. at the Ramada Renaissance at Techworld, 999—9th Street NW., Washington, DC 20001-9000.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C Street NW., MS 7026-MIB, Washington, DC 20240; telephone 202-208-7167; fax 208-4868.

Agenda: The Advisory Committee for the White House Conference on Indian Education will discuss and advise the Task Force on aspects of the Conference and actions which are necessary for the conduct of the Conference. Summary minutes of the meeting will be made available upon request. The meeting of the Advisory Committee will be open to the public.

Items to be discussed: Conference activities; review agenda and program; Post-Conference activities; activities for conference reporting; Conference topics and other matters related to the Conference.

Dated: January 7, 1992.

Mark Stephenson,

Assistant to the Secretary and Director of Communication.

[FR Doc. 92-998 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-RK-M

White House Conference on Indian Education Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of conference.

SUMMARY: This notice announces the White House Conference on Indian Education. The White House Conference on Indian Education was established by Public law 100–297, part E, section 5502 and provides that the purpose shall be (1) to explore the feasibility of establishing an independent Board of Indian Education that would assume responsibilities for all existing federal programs relating to the education of Indians and (2) to develop recommendations for the improvement of educational programs to make the programs more relevant to the needs of Indians.

DATE, TIME AND PLACE: The White House Conference on Indian Education shall be January 22 from 9 a.m. to 10:30 p.m., January 23 from 7 a.m. to 9:30 p.m., and January 24 from 7 a.m. to 5 p.m. The site of the Conference will be the Ramada Renaissance at Techworld, 999—9th Street, NW.; Washington, DC 20001–9000.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C Street NW., MS 7026–MIB, Washington, DC 20240; telephone 202–208–7167; fax 208–4868.

Agenda: The Conference delegates and observers will discuss Indian Education topics in eleven work group sessions. Plans of action will be developed and presented to voting delegates for consideration as recommendations. An open forum will allow participants an opportunity to present topics for consideration by the delegates. A delegate Resolution Assembly will be held on the last day of the Conference to make decisions on recommendations. The Conference will be opened to the public with the exception of the delegate orientation. Highlights of the conference will be made available through the Government Printing Office after the staff has complied the material in a document for presentation to the President of the United States.

Dated: January 8, 1992.

Mark Stephenson,

Assistant to the Secretary and Director of Communication.

[FR Doc. 92–999 Filed 1–14–92; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[WY–060–02–4120–09]

West Rocky Butte Coal Lease Application; Campbell County, WY

AGENCY: Bureau of Land Management, Wyoming, Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement (DEIS) pursuant to 40 CFR 1500–1508 for the West Rocky Butte Coal Lease Application (WYW–122586) in the Powder River Basin, Campbell County, Wyoming.

SUMMARY: Northwestern Resources Co. (NWR) has applied for a coal lease for 463.2 acres (with an estimated 59 million tons of recoverable coal) in the area adjacent to the Rocky Butte Lease (WYW–78633) in Campbell County, Wyoming. The BLM has prepared an EIS to evaluate the environmental impacts of (1) issuing a competitive coal lease, and (2) subsequent approval of a logical mining unit (LMU) request from NWR for the Rocky Butte and West Rocky Butte tracts. Currently, there are no mining facilities or operations on the Rocky Butte lease, so a new mine start would be necessary to begin production. The area is located about 10 miles southeast of the city of Gillette, Wyoming.

DATES: The public comment period will begin on January 17, 1992 and will end on March 16, 1992. A public hearing has been scheduled for February 26, 1992, beginning at 7 p.m. m.s.t., at the Holiday Inn Gillette, Wyoming. In order to ensure that comments will be considered in the DEIS, they should be received no later than c.o.b. March 16, 1992 at the address listed below.

ADDRESSES: Comments or concerns should be addressed to Mr. Jim Melton, EIS Team Leader, BLM Casper District Office, 1701 East E Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Jim Melton or Mike Karbs, phone (307) 261–7600, or contact the address listed above.

SUPPLEMENTARY INFORMATION: The coal lease application is being processed under 43 CFR part 3435. In order for the West Rocky Butte tract to be mined, the applicant would need to be the successful high bidder at a public competitive lease sale; then the tract would have to be combined with the existing Rocky Butte lease into a subsequent logical mining unit (LMU), and the entire area be permitted as a new mine. The Office of Surface Mining (OSM) has been identified as a cooperating agency in the preparation of the DEIS. The major issues identified through the scoping process revolved around air quality, hydrology, reclamation, historical and cultural resources, and socioeconomics as they relate to a new mine start in Campbell County, and in the Wyoming portion of the Powder River Basin.

The DEIS analyzes the impacts of developing and operating a surface coal mine on the combined Rocky Butte and West Rocky Butte tracts, a total of about 9,647 acres, containing an estimated 625 million tons of recoverable coal. The DEIS analyzes local, regional, and cumulative impacts from producing 16 million tons of coal by 1996. The DEIS also analyzes the No Action alternative.

For mining to occur in this instance, BLM has two separate, but related decisions. First, based upon the EIS, the BLM will determine if the lease area is suitable for coal leasing and will develop any special stipulations necessary to protect other resources in the area. If BLM determines that the area is suitable for coal leasing, a competitive lease sale would then be scheduled and held. In this case, if NWR is the successful high bidder, and if their bid meets or exceeds the fair market value, they would be awarded the lease for the West Rocky Butte Tract. Since NWR has indicated a desire to combine the two tracts, BLM's next decision would be to approve or deny an application to form an LMU. The Rocky Butte Lease (WYW–78633) was purchased in the 1982 Powder River Coal Sale. This lease will be terminated on February 1, 1993 due to noncompliance with the diligence requirements of section 2(a)(2)(A) of the Mineral Leasing Act unless the company can combine the two tracts into an approved LMU before this date.

F. William Eikenberry,

Acting State Director, Wyoming.

[FR Doc. 92–1025 Filed 1–14–92; 8:45 am]

BILLING CODE 4310–22–M

[UT–050–4410–08–241A]

Correction of Council Meeting Location

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: The Rickfield District Advisory Council meeting scheduled for January 28, 1992 will start at 10 a.m. at the Resource Area Office, 35 East 500 North, Fillmore, Utah.

Dated: January 7, 1992.

Sam Rowley,

Associate District Manager.

[FR Doc. 92-968 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-DQ-M

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting; Susanville District Grazing Advisory Board, Susanville, CA.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of Interior's discretionary authority on May 14, 1986, will meet on February 26, 1992.

The February 26 meeting will begin at 10 a.m. at the Surprise Resource Area Office, Bureau of Land Management, 602 Cressler Street, Cedarville, California.

Subjects to be covered during the meeting will include a report of progress on range improvements for FY 1992, proposed range improvements for FY 1993, a report on new and revised Allotment Management Plans (AMPs) for FY 1992, a discussion of cattleguard maintenance, a report on the Wild Horse and Burro Program, a discussion of subleasing, a discussion of progress on the East Lassen Integrated Management Plan, a report on progress of the proposed Black Rock/High Rock National Conservation Area, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. to 4:30 p.m. on February 26, 1992 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by February 20, 1992. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board Meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 92-1039 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-942-00-4730-12: GP2-087]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 20 S., R. 4 W., accepted December 17, 1991
T. 24 S., R. 4 W., accepted December 27, 1991
T. 5 N., R. 7 W., accepted December 20, 1991
T. 12 S., R. 7 W., accepted December 27, 1991
T. 29 S., R. 8 W., accepted December 5, 1991
T. 9 S., R. 10 W., accepted December 17, 1991
T. 1 N., R. 33 E., accepted December 11, 1991

Washington

T. 9 N., R. 14 E., accepted December 31, 1991
T. 10 N., R. 14 E., accepted December 30, 1991
T. 7 N., R. 16 E., accepted December 5, 1991
T. 10 N., R. 21 E., accepted December 5, 1991

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 3, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-974 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-33-M

[AZ-930-4214-10; AZA-26088, AZA-26089]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona, Correction

January 6, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects a legal description in a notice of proposed withdrawal and opportunity for public meeting in Arizona previously published in the Federal Register on December 27, 1991 (56 FR 67095). On page 67095, in column 2, line 3, in section 18, "W½E½, NE¼SW¼" is corrected to read "W½E½NE¼SE¼". In column 2, line 5, "T. 21 S." is corrected to read "T. 23 S."

Beaumont C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 92-1038 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

North American Wetlands Conservation Council; Change in Grant Proposal Due Dates

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of schedule change.

SUMMARY: This notice advises the public that due dates for submitting grant proposals are changed to April 1 and August 1.

DATES: Proposals will be accepted throughout the year, however to allow for adequate review time, U.S. proposals will be due April 1, 1992 and August 1, 1992 under the revised schedule.

ADDRESSES: For information concerning the North American Wetlands Conservation Act grants program, contact the North American Wetlands Conservation Council Coordinator, U.S. Fish and Wildlife Service, North American Waterfowl and Wetlands Office, Arlington Square Building, room 340, 4401 N. Fairfax Drive, Arlington, Virginia 22203 during normal business hours (7:45 a.m.–4:15 p.m. e.t.s.) in writing or by phone (703, 358–1784).

FOR FURTHER INFORMATION CONTACT: Dr. Robert Streeter, Coordinator, North

American Wetlands Conservation Council at the above address and phone number.

SUPPLEMENTARY INFORMATION: This notice is issued to inform applicants preparing proposals under the old schedule that a revised schedule is in effect. A notice will be published in the Federal Register when new grant proposal guidelines are available in February 1992.

Dated: January 7, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-895 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Document Prepared for Pipeline/Power Cable Installation Project on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the availability of environmental document prepared for the Santa Ynez Unit Pipeline/Power Cable Installation Project on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEDA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), prepared by the MMS for the following Santa Ynez Unit Development and Production Plan Modifications.

Parties

Exxon Company, U.S.A.

Activity	Location	Date
Realignment of proposed emulsion and gas pipeline configuration and installation of power cables.	Santa Barbara Channel, Santa Ynez Unit, Leases OCS-P 0182, 0188, 0190, 0191, and 0329.	12/91 thru 3/92.

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about EA's and FONSI's prepared for activities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS Region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor, Office of Leasing and Environment, Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Mail Stop 7300, Camarillo, California, 93010, Telephone (805) 389-7801.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to research and development of mineral resources on the Pacific OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: January 3, 1992.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 92-995 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-330]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

In the matter of certain computer system state save/restore software and associated backup power supplies for use in power outages.

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: ASTEC (BSR) PLC (ASTEC) and Emerson Electric Company.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on January 6, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone (202) 205-1802.

Issued: January 6, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1061 Filed 1-14-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-331]

Commission Determination Not To Review an Initial Determination Designating the Investigation "More Complicated"

In the matter of certain microcomputer memory controllers, components thereof and products containing same.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation has been extended by six months, *i.e.*, from October 19, 1992, to April 19, 1993.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On November 25, 1991, respondents ETEQ Microsystems, Inc., Sun Electronics Corporation, OPTi Computer, Inc., and Elite Microelectronic, Inc. filed a joint motion to designate the investigation more complicated. The motion was supported by the Commission investigative attorney, but opposed by complainant Chips and Technologies, Inc. The presiding ALJ issued an ID on December 11, 1991, designating the investigation more complicated. The ID stated that the technology which underlies the subject matter of the investigation is complex, involving means for addressing, managing, and accessing various types of semiconductor memories.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: January 8, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–1059 Filed 1–14–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–331]

Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

In the matter of certain microcomputer memory controllers, components thereof and products containing same.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting a motion to amend the complaint and notice of investigation to add allegations of infringement of an additional patent and claim.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On November 26, 1991, complainant Chips and Technologies, Inc. filed a motion to amend the complaint and notice of investigation to add allegations of infringement of claim 1 of U.S. Letters Patent 5,051,889. The motion was opposed by respondents and supported by the Commission investigative attorney. On December 10, 1991, the presiding ALJ issued an ID (Order No. 4) granting the motion. No petitions for review of the ID or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: January 8, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–1060 Filed 1–14–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–525 (Final)]

Nepheline Syenite From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–525 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of nepheline syenite,[1] provided for in subheading 2529.30.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigaitons, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of nepheline syenite from Canada are being sold in the United States at less than fair value within the meaning of section 733 of the act (19

[1] The product covered by this investigation is nepheline syenite, which is a coarse crystalline rock consisting principally of feldspathic minerals (i.e., sodium-potassium feldspars and nepheline), with little or no free quartz, and ground no finer than 140 mesh.

U.S.C. 1673b). The investigation was requested in a petition filed on July 12, 1991, by The Feldspar Corporation, Asheville, NC.

Participation in the investigation and public service list. Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.**

A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in this investigation will be placed in the nonpublic record on March 6, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 19, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 6, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 10, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions. Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 16, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is March 27, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 27, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: January 9, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1058 Filed 1-14-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31961 (Sub 1); (Sub 2); (Sub 3)]

Caprail I—Acquisition Exemption—Consolidated Rail Corporation; Ohio Department of Transportation—Lease Exemption—Caprail I Lines In Ohio; Columbus & Ohio River Railroad Company—Lease and Operation Exemption—Ohio Department of Transportation Lines

By notice filed December 11, 1991, Columbus & Ohio River Railroad Company (CUOH) and the Ohio Department of Transportation (ODOT) seek exemptions for the following transactions: (1) The acquisition of about 161.7 miles of Consolidated Rail Corporation (Conrail) line and rail property by Caprail I (Caprail), a non-carrier special purpose subsidiary of Capcorp Financial, Inc. d/b/a First Capitalcorp (First Capitalcorp); (2) Caprail's lease of the line to ODOT; and (3) ODOT's lease of the line to CUOH, which will then operate the line. Under the restructured arrangement, ODOT will neither undertake nor hold itself out to provide rail common carrier service.[1] This notice supersedes the previous notice in the lead docket because of changes in the acquisition process.[2]

The total number of route miles to be acquired by ODOT and operated by CUOH is approximately 161.7, comprised of about 129.1 miles currently owned exclusively by Conrail, and Conrail's undivided one-half interest in 32.6 miles between Columbus and Newark, OH, owned and operated jointly with CSX Transportation, Inc. (CSXT).[3]

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[1] By letter filed December 17, 1991, CUOH and ODOT clarified the December 11, 1991, notice. ODOT acknowledges that while it will not operate the line at any time, it will retain a residual common carrier obligation in the event that CUOH ceases operations over the line. Caprail also will retain a residual common carrier obligation.

[2] In the lead docket, Finance Docket No. 31961, *Columbus & Ohio River Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation* (not printed), notice of exemption served and published in the Federal Register (56 FR 57663) November 13, 1991, CUOH invoked the Commission's class exemption procedures for acquisition and operation. The exemption became effective 7 days after the October 18, 1991, filing date of the verified notice. By letter filed November 26, 1991, CUOH informed the Commission that financing the transaction would necessitate certain structural changes. CUOH requested that "* * * further Commission processing of the subject Notice be suspended, until such time as a revised Notice can be prepared and filed." The current notice was styled as an "amendment to the prior Notice" filed in the lead docket. However, the transactions cannot be characterized as amendments and must be treated separately. Because these transactions supersede those that became effective in the lead docket, no further action need be taken in that docket.

CUOH is a non-carrier subsidiary of Summit View Corporation, a holding company which controls other carriers. Since the transaction in the lead docket has apparently not been consummated, CUOH is currently a noncarrier. Before consummation of the subject transactions, the stock of CUOH will be transferred to Bank One Ohio Trust Company, N.A., Trustee, under an Independent Voting Trust Agreement entered into under 49 CFR 1013.1, *et seq.*

[3] The Ohio property consists of the Weirton Secondary Track, between milepost 157.8±, at Newark, and milespot 49.5±, at the East side of the Gould Tunnel; the Cadiz Running Track, between the point of its connection with the Weirton Secondary at Cadiz Junction (milepost 0.0) and milepost 12.8±; the Hebron Industrial Track, between the point of its connection with the Weirton Secondary Track at Heath (milepost 113.0±) and U.S. Route 40 (Main Street) at milepost 138.5±, in Union; the Trinway Secondary Track, between the point of its connection to the Weirton Secondary Track at Trinway (milepost 0.3) and

Continued

ODOT will acquire the line by entering into a capital lease agreement with Caprail, which is providing the financing for the acquisition and will take legal title to the line from Conrail. After ODOT retires the financing obligations to First Capitalcorp, legal title will vest in ODOT.

CUOH will operate over the entire line as a common carrier railroad. Traffic will be interchanged with Conrail at Columbus and Gould, OH. Additional interchanges may be established with CSXT or Norfolk Southern Corporation at Columbus, Newark, or Urichsville, OH, or both; and with the Ohio Central Railroad at Morgan Run or Trinway, OH, or both.

The parties contemplate that the transaction will be consummated immediately after the effectiveness of the exemption notice.

Any comments must be filed with the Commission and served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transactions.

Decided: January 9, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1042 Filed 1-14-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31992]

Soo Line Railroad Company—Trackage Rights Exemption—Burlington Northern Railroad Co.

Burlington Northern Railroad Company has agreed to grant non-exclusive overhead trackage rights to Soo Line Railroad Company over 61.29 miles of line between milepost 29.45, near Erskine, and milepost 90.74, near Bemidji, in Pennington, Clearwater, and Beltrami Counties, MN. The trackage rights were to become effective on December 30, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, 1000 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 9, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1043 Filed 1-14-92; 8:45 am]

BILLING CODE 7035-01-M

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milepost 1.43± at the Cass/Dresden Corporate Line; the East Columbus Industrial Track; the East Columbus Running Track, between mileposts 4.1 and 5.3, in Mifflin; and Conrail's undivided one-half interest in the Weirton Secondary Track between CSXT milepost 136.4±, at Columbus, and CSXT milepost 103.8±, at Newark.

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Bankruptcy Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 9 a.m.

DATES: March 26–27, 1992.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW., room 638, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: January 3, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92-978 Filed 1-14-92; 8:45 am]

BILLING CODE 2210-01-M

Meeting of the Judicial Conference Advisory Committee on Civil Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Advisory Committee on Civil Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 9 a.m.

DATES: April 13–15, 1992.

ADDRESSES: Federal Judicial Center, Dolley Madison House, 1st Floor/Clark Room, 1520 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: January 3, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92-976 Filed 1-14-92; 8:45 am]

BILLING CODE 2210-01-M

Hearing and Meeting of the Judicial Conference Advisory Committee on Civil Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open hearing and meeting.

SUMMARY: The Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure has proposed amendments to the Civil Rules and the Rules of Evidence.

Public hearings on these proposed amendments were held in Los Angeles on November 21, 1991. Many individuals and organizations requesting an opportunity to testify could not, however, be reached. Accordingly, a follow-up hearing will be held at the United States Courthouse in Atlanta, Georgia, on February 19–20, 1992, to accommodate those witnesses who could not be heard in Los Angeles. Although additional witnesses cannot now be accommodated, the hearings are open to public observation and will commence at 8:30 a.m. each day.

The Committee does seek the written advice and assistance of anyone who wishes to comment on the proposed amendments to the Civil Rules and Rules on Evidence. We request that all comments and suggestions be placed in the hands of the Secretary as soon as convenient and, in any event, no later than February 15, 1992.

All communications with respect to the proposals should be addressed to the Secretary of the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544.

DATES: February 19–20, 1992 (Hearing); February 21, 1992 (Meeting).

ADDRESSES: United States Courthouse, 75 Spring Street, SW., Atlanta, Georgia 30326.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: January 3, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92–977 Filed 1–14–92; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Criminal Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Criminal Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 9 a.m.

DATES: April 23–24, 1992.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW., room 638; Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: January 3, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92–979 Filed 1–14–92; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgment Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Endicott Johnson Corporation, The Village of Endicott, New York, the Town of Union, New York, and George Industries, Inc.* (N.D.N.Y.), Civil Action No. 92–CV25, was lodged with the United States District Court for the Northern District of New York on January 7, 1992. The proposed consent decree requires the Defendants to implement interim remedial measures for the Endicott Wellfield Superfund Site, located in the Village of Endicott, Broome County, New York, set forth in the March 29, 1991 Record of Decision, and to pay the future oversight costs incurred by the United States for its oversight of the work performed under the consent decree. The interim remedy consists of installing a supplemental purge well downgradient of the Endicott Landfill, which will increase the efficiency of the existing purge well network and aid in aquifer restoration by reduction of the contaminant plume, monitoring the purge wells, and performing an aquifer pump test. In the Consent Decree, the Defendants agree to implement the 1991 Record of Decision, and to pay all future oversight costs incurred by the United States at the Site in overseeing work performed under the consent decree.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Endicott Johnson Corporation,* The Village of Endicott, New York, the Town of Union, New York, and George Industries, Inc., D.O.J. Ref. No. 90–11–3–299A.

The Consent Decree may be examined at the Office of the United States Attorney, 319 Federal Building, Binghampton, New York 13901; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $37.00 (for copying costs) payable to Consent Decree Library.

Roger B. Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–972 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Grant Gear Works, Inc.

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9622(i), and Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Grant Gear Works, Inc.*, et al., Civil Action No. 91–13381Y, was lodged, together with the complaint, in the United States District Court for the District of Massachusetts on December 27, 1991. The proposed Consent Decree, if entered, will resolve the liability of Grant Gear Works, Inc., and of John F. Hurley and Robert J. Hurley, as trustees of the Grant Gear Realty Trust (collectively, "Defendants"), under section 107(a) of CERCLA, 42 U.S.C. 9607(a), in connection with alleged releases of hazardous substances at the Norwood PCBs Superfund Site, a 25-acre parcel located at U.S. Route 1 and Meadow Brook in Norwood, Massachusetts. Under the settlement reflected in the proposed Consent Decree, the Defendants will pay response costs of $100,000 plus interest to the United States, plus a portion of certain additional monies the Defendants may recover as a result of private litigation and insurance relating to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Grant Gear Works, Inc.*, et al., Department of Justice No. 90–11–2–372.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Massachusetts, 1107 John W. McCormack Federal Bldg., U.S. P.O. & Courthouse, Boston, Massachusetts 02109; at the Region I office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, room 2203, Boston,

Massachusetts; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center, Box 1097 at the above address. In requesting a copy, please enclose a check in the amount of $10.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Roger B. Clegg,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–969 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Michigan Materials and Processing Institute

Notice is hereby given that, on December 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following company was recently accepted as a Full Member of MMPI: Brunswick Defense Composites Group, Skokie, IL.

The following companies were recently accepted as Associate Members in MMPI: Martec Plastics, Fenton, MI and Quantum Composites, Inc., Midland, MI.

On August 7, 1990, MMPI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 FR 36710. On June 10, 1991, MMPI filed a notice of additional members to the venture. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1991, 56 FR 30771.

Membership in this venture remains open, and MMPI intends to file additional written notification disclosing all changes in membership of this venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–971 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on November 12, 1991 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 16, 1990, March 7, 1990, April 11, 1990, July 11, 1990, October 2, 1990, January 17, 1991, March 1, 1991, and July 30, 1991. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), October 24, 1990 (55 FR 42916), December 28, 1990 (55 FR 53367), February 11, 1991 (56 FR 5424), July 1, 1991 (56 FR 29976), and August 29, 1991 (56 FR 42757), respectively. On October 21, 1985, MCC filed an additional notification for which a **Federal Register** notice was not required.

MCC disclosed that it is conducting research in the area of Holostore commercialization and that Deltronic Crystal Industries, Inc. of Dover, NJ and Displaytech, Inc. of Boulder, Colorado have agreed to become Associate Members of MCC and to participate in this research.

MCC disclosed that ERIM of Ann Arbor, Michigan and TRW of Redondo Beach, CA have become Associate Members of MCC and participants in its Packaging/Interconnect Technology Program.

For the purposes of the participation of NCR Corporation of Dayton, Ohio in MCC, AT&T of Allentown, PA is to be deemed a subsidiary of NCR Corporation.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–970 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE, TIME AND PLACE: February 12, 1992, 10 a.m.–12:00 noon, Rm. S–4215 A&B, Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

PURPOSE: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone (202) 523–2752.

Signed at Washington, DC this 8th day of January 1992.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 92–1092 Filed 1–14–92; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Apache Corp. (workers)	Denver, CO	12/30/91	12/26/91	26,691	Oil and gas exploration.
Ardmore Industries (workers)	Ardmore, TN	12/30/91	12/05/91	26,692	Men's pants and shorts.
Bethlehem Steel Corp. (USWA)	Sparrows Point, MD	12/30/91	12/19/91	26,693	Coke.
Black Hills Trucking, Inc. (workers)	Watford City, ND	12/30/91	12/16/91	26,694	Transporting oilfield equipment.
Black Hills Trucking, Inc. (workers)	Williston, ND	12/30/91	12/16/91	26,695	Transporting oilfield equipment.
Bohemia, Inc. (workers)	Eugene, OR	12/30/91	12/20/91	26,696	Lumber.
Briggs and Stratton Corp. (AIW)	Wauwatosa, WI	12/30/91	12/13/91	26,697	Small gasoline engines.
Cheyenne Services, Inc. (Co)	Pleasanton, TX	12/30/91	12/17/91	26,698	Oilfield services.
Fashions by Anna, Inc. (ILGWU)	Orange, NJ	12/30/91	12/20/91	26,699	Ladies dresses.
Halliburton Services (workers)	Rankin, TX 79778	12/30/91	12/15/91	26,700	Cement work.
Harris Corp., Semiconductor Prod. Div. (Co)	Mountaintop, PA	12/30/91	12/21/91	26,701	Semiconductors.
Harris Corp., Semiconductor Prod. Div. (Co)	Somerville, NJ	12/30/91	12/21/91	26,702	Semiconductors.
Harris Corp., Semiconductor Prod. Div. (Co)	Findlay, OH	12/30/91	12/21/91	26,703	Semiconductors.
Harris Corp., Semiconductor Prod. Div. (Co)	Melbourne, FL	12/30/91	12/21/91	26,704	Semiconductors.
Harris Corp., Semiconductor Prod. Div. (Co)	Santa Clara, CA	12/30/91	12/21/91	26,705	Semiconductors.
Herman Funke & Sons, Inc. (UTWA)	Ashley, PA	12/30/91	12/18/91	26,706	Schiffli embroidery and lace.
Inter-City Products (USA) (SMW)	Red Bud, IL	12/30/91	12/19/91	26,707	Packaged heating and cooling units.
Owens-Brockway (GMP)	Ada, OK	12/30/91	12/20/91	26,708	Pickle jars.
Rand and Rand, Inc. (ILGWU)	Philadelphia, PA	12/30/91	12/23/91	26,709	Skirts.
Siemens Stromberg-Carlson (Co)	Phoenix, AZ	12/30/91	12/19/91	26,710	Telecommunications transmission prod.
Tuboscope, Inc. (workers)	Houston, TX	12/30/91	12/17/91	26,711	Oilfield services.
(UNOCAL) Molycorp, Inc. (workers)	Washington, PA	12/30/91	12/20/91	26,712	Molybdenum.

[FR Doc. 92-1095 Filed 1-14-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,464, et al.]

Halliburton Logging Services, Inc., et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 13, 1991, applicable to all workers of Halliburton Logging Services, Inc., Midland, Texas.

The Department is amending the certification to include all locations in the Western Division except Farmington, New Mexico whose workers were approved for certification earlier under petition TA-W-26,432.

New information was received by the Department showing that the Western Division comprising the above listed locations of Halliburton Logging Services has experienced substantial declines in sales and employment in 1991 compared to 1990.

Other information shows that over 25 percent of the revenues are derived from gas. Accordingly, the notice is amended by including the subject locations of the Western Division under certification TA-W-26,464.

The amended notice applicable to TA-W-26,464 is hereby issued as follows:

All workers of Halliburton Logging Services, Inc., Midland, Texas and in Gillette, Wyoming; Rock Springs, Wyoming; Bakersfield, California; Ventura, California; Woodland, California; Brighton, Colorado; Vernal, Utah; Williston, North Dakota; Anchorage, Alaska; North Slope, Alaska; and Sterling, Alaska who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance.

Signed at Washington, DC this January 8, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-1096 Filed 1-14-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to MDC, Inc., to provide technical assistance to Southern Service Delivery Areas (SDAs) through the Learning-Teacher Network Project.

DATES: It is anticipated that this grant award will be executed by February 15, 1992, and will be funded for sixteen months. Submit comments by 4:45 p.m. (Eastern Time), on January 30, 1992.

ADDRESSES: Submit comments regarding this proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Laura Cesario; Reference FR-DAA-006-91.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to MDC, Inc., of Chapel Hill, North Carolina. MDC, Inc. initiated The Learner-Teacher Network Project to increase the number and effectiveness of JTPA programs and practices available to southern Service Delivery Areas (SDAs). MDC, will extend the current project to determine the feasibility of institutionalizing Learner-Teacher technical assistance brokering and facilitation activities at the regional and state levels of the Job Training Partnership Act (JTPA) System. In addition, the grantee will develop an analysis and report on workforce preparedness in the South that will identify and raise awareness in the public and private sectors of the action necessary to correct the mismatches between changing labor market demands and the basic skills of significant segments of the Southern workforce. Funds for this activity are authorized by the Job Training Partnership Act, as amended, title IV—Federally Administered Programs. The proposed funding is approximately $195,000 for sixteen months.

Signed at Washington, DC, on December 17, 1991.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92-1091 Filed 1-14-92; 8:45 am]

BILLING CODE 4510-30-M

Native American Programs; Proposed Total Allocations and Allocation Formulas for Program Year 1992 Regular Program and Calendar Year 1992 Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the proposed Native American allocations, distribution formulas and rationale, and individual grantee planning estimates for Program Year (PY) 1992 (July 1, 1992–June 30, 1993) for regular programs funded under title IV-A of the Job Training Partnership Act, and for Calendar Year 1992 for Summer Youth Employment and Training Programs (SYETP) funded under title II-B of the JTPA.

DATES: Written comments on this proposal are invited and must be received on or before February 14, 1992.

ADDRESSES: Send written comments to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Carmelo J. Milici, Phone: 202-535-0507 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration of the Department of Labor publishes below for review and comment the proposed allocations and distribution formulas for areas to be served by Native American grantees to be funded under JTPA section 401 and JTPA title II, part B. The amounts to be distributed are $63,000,000 for the JTPA section 401 programs for Program Year (PY) 1992 (July 1, 1992–June 30, 1993); and $12,418,726 for the JTPA title II, part B, Summer Youth Employment and Training Program (SYETP) for the Summer of Calendar Year 1992. The planning estimates reflect the existing grantees and their currently assigned areas, and are subject to change for such reasons as Administrative Law Judge decisions, the possibility that a grantee will want to have its designation withdrawn, legislative changes, et al.

The formula for allocating JTPA section 401 funds provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formulas is that the number of poverty-level persons, unemployed persons, and youths among the Native American population is indicative of the need for training and employment funds.

Statistics on youths, unemployed persons, and poverty-level persons among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC this 3rd day of January 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1992 TITLE IV-A AND PY 1991 II-B (SUMMER 1992) PROPOSED ALLOCATIONS FOR NATIVE AMERICANS

[December 11, 1991]

Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Inter-Tribal Council of Alabama, 669 South Lawrence Street, Montgomery, Alabama 36104; Grant Number: 99-1-3624-55-255-02	309,229	274,383	61,846	0	0	0
Poarch Band of Creek Indians, Route 3, Box 243A, Atmore, Alabama 36502; Grant Number: 99-1-0648-55-173-02	101,315	81,052	20,263	2,253	1,802	451
Aleutian/Pribil of Islands Assoc. Inc., 401 East Fireweed Lane, Suite 201 Anchorage, Alaska, 99503-211; Grant Number: 99-1-0117-55-139-02	48,965	39,172	9,793	33,255	26,604	6,651
Assoc. of Village Council Presidents, Pouch 219 Bethel, Alaska 99559; Grant Number: 99-1-2713-55-210-02	582,031	565,625	116,406	249,908	199,926	49,982

U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1992 TITLE IV-A AND PY 1991 II-B (SUMMER 1992) PROPOSED ALLOCATIONS FOR NATIVE AMERICANS—Continued

[December 11, 1991]

Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Bristol Bay Native Association, P.O. Box 310 Dillingham, Alaska 99576; Grant Number: 99-1-0116-55-138-02	144,260	115,424	28,856	75,883	60,706	15,177
Central Council of Tungit and Haida Indian Tribes of Alaska, 320 W. Willoughby, Suite 300, Juneau, Alaska 99801; Grant Number: 99-1-0114-55-138-02	180,607	144,486	36,121	124,819	99,855	24,964
Cook Inlet Tribal Council, 670 West Fireweed Lane—Suite 200, Anchorage, Alaska 99503; Grant Number: 99-1-3402-55-243-02	373,887	299,110	74,777	192,230	153,784	38,446
Kawerak Incorporated, P.O. Box 948 Nome, Alaska 99762; Grant Number: 99-1-0123-55-141-02	227,333	181,866	45,467	88,320	70,656	17,664
Kenaitze Indian Tribe, P.O. Box 988 Kenai, Alaska 99611; Grant Number: 99-1-0089-55-135-02	31,015	24,812	6,203	16,763	13,410	3,353
Kodiak Area Native Association, 402 Center Avenue, Kodiak, Alaska 99615; Grant Number: 99-1-0115-55-137-02	65,734	52,587	13,147	32,083	25,666	6,417
Manilaq Manpower, P.O. Box 725, Kotzebue, Alaska 99752; Grant Number: 99-1-0124-55-142-02	178,390	142,172	35,678	85,075	68,070	17,015
Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926; Grant Number: 99-1-0064-55-121-02	16,185	12,948	3,237	17,484	13,987	3,497
North Pacific Rim, 300 C Street, Anchorage, Alaska 99503; Grant Number: 99-1-0118-55-140-02	59,369	47,495	11,874	25,054	20,043	5,011
Sitka Community Association, P.O. Box 1450, Sitka, Alaska 99835; Grant Number: 99-1-1776-55-254-02	44,690	35,752	8,938	36,319	29,055	7,264
Tanana Chiefs Conference, Inc., 122 First Avenue, Fairbanks, Alaska 99701, Grant Number: 99-1-3109-55-227-02	396,628	317,302	79,326	206,740	165,392	41,348
Affiliation of Arizona Ind. Cntrs, Inc., Phoenix, Arizona 85014; Grant Number: 99-1-0268-55-158-02	262,354	209,883	52,471	0	0	0
American Indian Assoc. of Tucson, P.O. Box 2307—131 East Broadway, First Floor, Tucson, Arizona 85705; Grant Number: 99-1-0492-55-164-02	342,343	273,874	68,469	0	0	0
Colorado River Indian Tribes, Route 1, Box 23-B, Parker, Arizona 85344; Grant Number: 99-1-0498-55-165-02	83,845	67,076	16,769	29,921	23,937	5,984
Gila River Indian Community, Box 97, Sacaton, Arizona 85247; Grant Number: 99-1-0054-55-116-02	501,331	401,065	100,266	128,875	103,100	25,775
Hopi Tribal Council, Box 123, Kykotsmovi, Arizona 86039; Grant Number: 99-1-0057-117-02	392,851	314,281	78,570	102,559	82,047	20,512
Indian Dev. Dist. of Arizona, Inc., 4560 North 19th Ave., Suite 200, Phoenix, Arizona 85015; Grant Number: 99-1-0053-55-115-02	114,569	91,655	22,914	41,817	33,454	8,363
Native Americans for Community Action, 2717 North Steves Boulevard, Suite 11, Flagstaff, Arizona 86004; Grant Number: 99-1-1777-55-193-02	116,778	93,422	23,356	0	0	0
Navajo Tribe of Indians, P.O. Box 1889, Window Rock, Arizona 86515; Grant Number: 99-1-0059-55-119-02	6,962,533	5,570,026	1,392,507	2,261,523	1,809,218	152,305
Pasolia Yaqui Tribe, 7474 S. Camino De Oeste, Tucson, Arizona 85746; Grant Number: 99-1-3289-55-237-02	39,364	31,491	7,873	8,922	7,138	1,784
Phoenix Indian Center, Inc., 2601 North Third Street—Suite 100, Phoenix, Arizona 85004; Grant Number: 99-1-0195-55-153-02	720,300	576,240	144,060	0	0	0
Salt River Pima—Maricopa Ind. Commun., Route 1, Box 216, Scottsdale, Arizona 85256; Grant Number: 99-1-0476-55-162-02	98,011	78,409	19,602	44,791	35,833	8,958
San Carlos Apache Tribe, P.O. Box '0', San Carlos, Arizona 85550; Grant Number: 99-1-0173-55-149-02	319,753	255,802	63,951	112,743	90,194	22,549
Tohono O'Odham Nation, P.O. Box 837, Sells, Arizona 85634; Grant Number: 99-1-0181-55-152-02	436,984	349,587	87,397	121,935	97,548	24,387
White Mountain Apache Tribe, P.O. Box 700, White River, Arizona 85941; Grant Number: 99-1-0174-55-150-02	339,608	271,686	67,922	126,441	101,153	25,288
Am. Indian Center of Arkansas, Inc., 2 Van Circle, Suite 2, Little Rock, Arkansas 72207; Grant Number: 99-1-1778-55-194-02	475,684	380,547	95,137	0	0	0
Amer. Indian Center of Santa Clara Valley, Inc., 919 The Alameda, San Jose, California 95126; Grant Number: 99-1-0499-55-166-02	241,653	193,322	48,331	0	0	0
California Indian Manpower Csrt., 4153 Northgate Boulevard, Sacramento, California 95834; Grant Number: 99-1-2058-55-203-02	3,159,081	2,527,265	631,816	168,799	135,039	33,760
Candelaria American Indian Council, 2635 Wagon Wheel Road, Oxnard, California 93030; Grant Number: 99-1-0086-55-133-02	470,784	376,627	94,157	0	0	0
Indian Human Resources Center, 4040 30th Street Suite A, San Diego, California 92104; Grant Number: 99-1-2441-55-209-02	460,886	368,709	92,177	0	0	0
Northern Calif. Ind. Dev. Council, Inc., 241 F Street, Eureka, California 95501; Grant Number: 99-1-0686-55-175-02	331,974	265,579	66,395	14,780	11,824	956

U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1992 TITLE IV-A AND PY 1991 II-B (SUMMER 1992) PROPOSED ALLOCATIONS FOR NATIVE AMERICANS—Continued

[December 11, 1991]

Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Southern California Indian Center, Inc., 12755 Brookhurst Street, P.O. Box 2550, Garden Grove, California 92642-2550; Grant Number: 99-1-0170-55-147-02	2,035,251	1,628,201	407,050	0	0	0
Tule River Tribal Council, Dept. of Health, Safety & Welfare, P.O. Box 589, Porterville, California 93258; Grant Number: 99-1-3219-55-230-02	136,547	109,238	27,309	4,055	3,244	811
United Indian Nations, Inc., 1320 Webster Street, Oakland, California 94612; Grant Number: 99-1-2310-55-208-02	656,273	525,018	131,255	0	0	0
YA-KA-AMA Indian Educ. and Dev., Inc., 6215 Eastside Road, Forestville, California 95436; Grant Number: 99-1-0082-55-132-02	135,175	108,140	27,035	0	0	0
Denver Indian Center, Inc., 4407 Morrison Road, Denver, Colorado 80219; Grant Number: 99-1-0076-55-129-02	630,420	504,336	126,084	0	0	0
Southern UTE Indian Tribe, P.O. Box 800, Ignacio, Colorado 81137; Grant Number: 99-1-2714-55-211-02	58,321	46,657	11,664	14,690	11,752	2,938
Ute Mountain Ute Tribe, P.O. Box 30, Towaoc, Colorado 81334; Grant Number: 99-1-1143-55-188-02	70,320	56,256	14,064	17,754	14,203	3,551
American Indians for Development, Inc., P.O. Box 117, Meriden, Connecticut 06450; Grant Number: 99-1-0361-55-160-02	196,339	157,071	39,268	0	0	0
Nanticoke Indian Association, Inc., Rt. 4, Box 107A, Millsboro, Delaware 19966; Grant Number: 99-1-3518-55-251-02	40,551	32,441	8,110	0	0	0
Fla. Governors Council on Ind. Affairs, 1020 Lafayette Street—Suite 102, Tallahassee, Florida 32301; Grant Numbers: 99-1-0692-55-178-02	1,245,565	996,452	249,113	0	0	0
Miccosukee Corporation, P.O. Box 440021, Tamiami Station, Miami, Florida 33144, Grant Number: 99-1-0052-55-114-02	124,899	99,919	24,980	38,212	30,570	7,642
Seminole Tribe of Florida, 6073 Stirling Road, Hollywood, Florida 33024; Grant Number: 99-1-0004-55-076-02	70,343	56,274	14,069	7,480	5,984	1,496
Alu Like, Inc., 1024 Mapunapuna Street, Honolulu, Hawaii 96819-4417; Grant Number: 99-1-1179-55-190-02	2,590,738	2,072,590	518,148	1,983,767	1,587,014	396,753
American Indian Services Corporation, 1405 North King Street, Suite 302, Honolulu, Hawaii 96817; Grant Number: 99-1-3404-55-244-02	91,346	73,077	18,269	0	0	0
Kootenai Tribe of Idaho, P.O. Box 1269, Bonners Ferry, Idaho 83805; Grant Number: 99-1-3334-55-238-02	33,740	26,992	6,748	1,262	1,010	252
Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho 83540-0365; Grant Number: 99-1-0065-55-122-02	84,400	67,520	16,880	11,806	9,445	2,361
Shoshone-Bannock Tribes, Fort Hall Business Council, P.O. Box 306, Fort Hall, Idaho 83203; Grant Number: 99-1-1780-55-195-02	250,611	200,489	50,122	38,302	30,642	7,660
American Indian Business Association, 4753 North Broadway, Suite 700, Chicago, Illinois 60640; Grant Number: 99-1-0809-55-181-02	1,135,804	908,643	227,161	0	0	0
Mid America All Indian Center, Inc., 650 N. Seneca, Wichita, Kansas 67203; Grant Number: 99-1-0168-55-145-02	169,355	135,484	33,871	0	0	0
United Tribes of Kansas and S.E. Neb., P.O. Box 29, Horton, Kansas 66439; Grant Number: 99-1-0178-85-151-02	517,885	414,308	103,577	9,373	7,498	1,875
Inter-Tribal Council of Louisiana, Inc., 5723 Superior Drive—Suite B-1, Baton Rouge, Louisiana 70816; Grant Number: 99-1-0026-55-092-02	469,312	375,450	93,862	5,227	4,182	1,045
Central Maine Indian Association, Inc., 157 Park Street—P.O. Box 2280, Bangor, Maine 04401; Grant Number: 99-1-2719-55-212-02	95,572	76,458	19,114	0	0	0
Tribal Governors, Inc., 93 Main Street, Orono, Maine 04473; Grant Number: 99-1-0001-55-074-02	109,943	87,954	21,989	26,226	20,981	5,245
Baltimore American Indian Center, 113 So. Broadway, Baltimore, Maryland 21231; Grant Number: 99-1-3405-55-245-02	373,336	298,669	74,667	0	0	0
Mashpee-Wampahoag Indian Tribal Council, Inc., P.O. Box 1048, Mashpee, Massachusetts 02649; Grant Number: 99-1-0408-55-161-02	86,766	69,413	17,353	0	0	0
Grand Rapids Inter-Tribal Council, 45 Lexington Ave. N.W., Grand Rapids, Michigan 49504; Grant Number: 99-1-0694-55-179-02	124,172	99,338	24,834	0	0	0
Grand Traverse Band of Ottawa and Chippewa Indians, Route 1 Box 135, Suttons Bay, Michigan 49682; Grant Number: 99-1-2721-55-213-02	57,528	46.022	11,506	2,343	1,874	469
Inter-Tribal Council of Michigan, Inc., 405 East Easterday Avenue, Sault Ste. Marie, Michigan 49783; Grant Number: 99-1-0172-55-148-02	68,915	55,132	13,783	29,109	23,287	5,822
Michigan Indian Employment and Training Services, Inc., 2459 Delphi Commerce Drive, Suite 5, Holt, Michigan 48858; Grant Number: 99-1-1144-55-189-02	830,407	664,326	166,081	0	0	0

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Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
North American Indian Assoc. of Detroit, 22720 Plymouth Road, Detroit, Michigan 48239; Grant Number: 99-1-0695-55-180-02	311,585	249,268	62,317	0	0	0
Potawatomi Indian Nation, 185 E. Main, Suite 300 Vincent Place, Benton Harbor, Michigan 49022; Grant Number: 99-1-3339-55-240-02	158,928	127,142	31,786	0	0	0
Sault Ste. Marie Tribe of Chippewa Indians, 2151 Shunk Road, Sault Ste. Marie, Michigan 49783; Grant Number: 99-1-0507-55-168-02	244,421	195,537	48,884	40,825	32,660	8,165
Southeastern Michigan Indians, Inc., 22620 Ryan Road, P.O. Box 861, Warren, Michigan 48090; Grant Number: 99-1-3220-55-231-02	174,152	139,322	34,830	0	0	0
American Indian Opportunities Ctr., 1845 East Franklin Avneue, Minneapolis, Minnesota 55404; Grant Number: 99-1-3221-55-232-02	545,761	436,609	109,152	0	0	0
Bois Forte R.B.C., P.O. Box 16, Nett Lake, Minnesota 55772; Grant Number: 99-1-0010-55-081-02	40,541	32,433	8,108	8,562	6,850	1,712
Fond Du Lac R.B.C., 105 University Road, Cloquet, Minnesota 55720; Grant Number: 99-1-0009-55-080-12	183,399	146,719	36,680	8,111	6,489	1,622
Leech Lake, R.B.C., Route 3, Box 100, Cass Lake, Minnesota 56633; Grant Number: 99-1-0012-55-083-02	187,307	149,846	37,461	46,773	37,418	9,355
Mille Lacs Band of Chippewa Indians, Star Route—Box 194 OIC Bldg., Onamia, Minnesota 56359; Grant Number: 99-1-0008-55-079-02	34,193	27,354	6,839	8,471	6,777	1,694
Minneapolis American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404; Grant Number: 99-1-0204-55-154-02	319,554	255,643	63,911	11,806	9,445	2,361
Red Lake Tribal Council, P.O. Box 310, Red Lake, Minnesota 56671; Grant Number: 99-1-0017-55-086-02	149,981	119,985	29,996	60,292	48,234	12,058
White Earth R.B.C., Box 418, White Earth, Minnesota 56591; Grant Number: 99-1-0011-55-082-02	167,889	134,311	33,578	48,125	38,500	9,625
Mississippi Band of Choctaw Indians, P.O. Box 6010, Choctaw Branch, Philadelphia, Mississippi 39350; Grant Number: 99-1-0005-55-077-02	325,160	260,128	65,032	49,657	39,726	9,931
Region VII American Indian Council, Inc., 310 Armour Road, Suite 205, North Kansas City, Missouri 64116; Grant Number: 99-1-0967-55-182-02	602,457	481,966	120,491	0	0	0
Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, P.O. Box 1027, Poplar, Montana 59255; Grant Number: 99-1-0033-55-098-02	224,343	179,474	44,869	73,359	58,687	14,672
Blackfeet Tribal Business Council, P.O. Box 1090, Browning, Montana 59417; Grant Number: 99-1-0006-55-078-02	260,236	208,189	52,047	88,139	70,511	17,628
Chippewa Cree Tribe, Rocky Boy Route—P.O. Box 578, Box Elder, Montana 59521; Grant Number: 99-1-0035-55-100-02	104,720	83,776	20,944	28,388	22,710	5,678
Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855; Grant Number: 99-1-0031-55-096-02	263,295	210,636	52,659	69,214	55,371	13,843
Crow Indian Tribe, P.O. Box 159, Crow Agency, Montana 59022; Grant Number: 99-1-0030-55-095-02	221,136	176,909	44,227	77,415	61,932	15,483
Fort Belknap Indian Community, P.O. Box 249, Harlem, Montana 59526; Grant Number: 99-1-0032-55-097-02	84,424	67,539	16,885	34,787	27,830	6,957
Montana United Indian Association, P.O. Box 6043, Helena, Montana 59604; Grant Number: 99-1-0074-55-127-02	454,033	363,226	90,807	0	0	0
Northern Cheyenne Tribe, P.O. Box 368, Lame Deer, Montana 59043; Grant Number: 99-1-0034-55-099-02	175,233	140,186	35,047	51,910	41,528	10,382
Indian Center, Inc., 1100 Military Road, Lincoln, Nebraska, 68508; Grant Number: 99-1-2722-55-214-02	180,712	144,570	36,142	0	0	0
Nebraska Indian Inter-Tribal Dev. Corp., Route 1—Box 66-A, Winnebago, Nebraska 68071; Grant Number: 99-1-0087-55-134-02	327,760	262,208	65,552	52,361	41,889	10,472
Inter-Tribal Council of Nevada, P.O. Box 7440, Reno, Nevada 89510; Grant Number: 99-1-0058-55-118-02	351,784	281,427	70,357	65,969	52,775	13,194
Las Vegas Indian Center, Inc., 2300 West Bonanza Road; Las Vegas, Nevada 89106; Grant Number: 99-1-0687-55-176-02	98,447	78,758	19,689	0	0	0
Shoshone Paiute Tribes, P.O. Box 219, Owyhee, Nevada 89832; Grant Number: 99-1-2723-55-215-02	173,349	138,679	34,670	18,385	14,708	3,677
Powhatan Renape Nation, Rankokus Reservation—P.O. Box 225, Rankokus, New Jersey 08073 Grant Number: 99-1-3222-55-233-02	311,467	249,174	62,293	0	0	0
Alamo Navajo School Board, P.O. Box 907, Magdalena, New Mexico 87825; Grant Number: 99-1-2724-55-216-02	81,414	65,131	16,283	17,033	13,626	3,407
All Indian Pueblo Council, Inc., 3939 San Pedro, NE—Suite D PO Box 3256, Albuquerque, New Mexico 87190; Grant Number: 99-1-3341-55-241-02	134,467	107,574	26,893	64,618	51,694	12,924

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Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Eight Northern Indian Pueblo Council, P.O. Box 969, San Juan Pueblo, New Mexico 87566; Grant Number: 99-1-3223-55-234-02	83,806	67,045	16,761	38,122	30,498	7,624
Five Sandoval Indian Pueblos, Inc., P.O. Box 580, Bernalillo, New Mexico 87004; Grant Number: 99-1-3336-55-239-02	126,215	100,972	25,243	65,248	52,198	13,050
Jicarilla Apache Tribe, P.O. Box 507, Dulce, New Mexico 87528-0507; Grant Number: 99-1-2725-55-217-02	56,784	45,427	11,357	29,830	23,864	5,966
Mescalero Apache Tribe, P.O. Box 176, Mescalero, New Mexico 88340; Grant Number: 99-1-3100-55-226-02	79,294	63,435	15,859	29,019	23,215	5,804
National Indian Youth Council, 318 Elm Street SE., Albuquerque, New Mexico 87102; Grant Number: 99-1-0077-55-130-02	753,522	602,818	150,704	0	0	0
Pueblo of Acoma, P.O. Box 469, Pueblo of Acoma, New Mexico 87034; Grant Number: 99-1-2199-55-204-02	106,442	85,154	21,288	39,564	31,651	7,913
Pueblo of Laguna, P.O. Box 194, Laguna, New Mexico 87026; Grant Number: 99-1-1583-55-191-02	79,890	63,912	15,978	55,425	44,340	11,085
Pueblo of Taos, P.O. Box 1846, Taos, New Mexico 87571; Grant Number: 99-1-2200-55-205-02	34,263	27,410	6,853	12,076	9,661	2,415
Pueblo of Zuni, P.O. Box 339, Zuni, New Mexico 87237; Grant Number: 99-1-0021-55-089-02	305,532	244,426	61,106	122,476	97,981	24,495
Ramah Navajo School Board, Inc., P.O. Box 190, Pine Hill, New Mexico 87357; Grant Number: 99-1-0146-55-143-02	97,558	78,046	19,512	22,350	17,880	4,470
Santa Clara Indian Pueblo, P.O. Box 580, Espanola, New Mexico 87532; Grant Number: 99-1-3224-55-235-02	20,426	16,341	4,085	5,407	4,326	1,081
Santo Domingo Tribe, P.O. Box 99, Santo Domingo, New Mexico 87052; Grant Number: 99-1-1781-55-196-02	133,001	106,401	26,600	39,564	31,651	7,913
American Indian Community House, Inc., 404 lafayette Street, 2nd Floor, New York City, New York 10003; Grant Number: 99-1-0348-55-159-02	815,673	652,538	163,135	2,974	2,379	595
Native American Cultural Center, Inc., 1475 Winton Road North—Suite 12, Rochester, New York 14609; Grant Number: 99-1-3407-55-246-02	299,537	239,630	59,907	6,939	5,551	1,388
Native American Comm. Svcs. of Erie & Niagara Ctys., 1047 Grant Street (rear)—P.O. Box 86, Buffalo, New York 14207-0086; Grant Number: 99-1-0689-55-177-02	242,926	194,341	48,585	9,733	7,786	1,947
St. Regis Mohawk Tribe, Community Building, Hogansburg, New York 13655; Grant Number: 99-1-0522-55-171-02	173,281	138,625	34,656	26,406	21,125	5,281
Seneca Nation of Indians, 1492 Route 438, Irving, New York 14081; Grant Number: 99-1-0169-55-146-02	322,221	257,777	64,444	52,000	41,600	10,400
Cumberland County Assoc. for Ind. People, 102 Indian Drive, Fayetteville, North Carolina 28301; Grant Number: 99-1-1782-55-197-02	131,879	105,503	26,376	0	0	0
Eastern Band of Cherokee Indians, P.O. Box 481, Cherokee, North Carolina 28719; Grant Number: 99-1-0003-55-075-02	248,561	198,849	49,712	82,912	66,330	16,582
Guilford Native American Assoc., P.O. Box 5623, 400 Prescott Street, Greensboro, North Carolina 27435-0623; Grant Number: 99-1-2727-55-219-02	100,242	80,194	20,048	0	0	0
Haliwa-Saponi Tribe, Inc., P.O. Box 99, Hollister, North Carolina 27844; Grant Number: 99-1-3514-55-247-02	69,865	55,892	13,973	0	0	0
Lumbee Reg. Dev. Assoc., P.O. Box 68, Pembroke, North Carolina 28372-0068; Grant Number: 99-1-0067-55-123-02	1,345,805	1,083,844	270,961	0	0	0
Metrolina Native American Assn., 2601-A East Seventh Street, Charlotte, North Carolina 28204; Grant Number: 99-1-2726-55-218-02	102,453	81,962	20,491	0	0	0
North Carolina Comm. of Ind. Affairs, 325 North Salisbury Street—Suite 579, Raleigh, North Carolina 27603-5940; Grant Number: 99-1-0070-55-124-02	333,983	267,186	66,797	0	0	0
Devils Lake Sioux Tribe, P.O. Box 359, Fort Totten, North Dakota 58335; Grant Number: 99-1-0037-55-101-02	124,818	99,854	24,964	36,860	29,488	7,372
Standing Rock Sioux Tribe, Box D, Fort Yates, North Dakota 58538; Grant Number: 99-1-0046-55-109-02	261,211	208,969	52,242	89,581	71,665	17,916
Three Affiliated Tribes—Fort Berthold Reservation, Box 597, New Town, North Dakota 58763; Grant Number: 99-1-0062-55-120-02	176,539	141,231	35,308	53,262	42,610	10,652
Turtle Mountain Band of Chippewa Indians, P.O. Box 900, Belcourt, North Dakota 58316; Grant Number: 99-1-0075-55-128-02	354,964	283,971	70,993	104,091	83,273	20,818
United Tribes Tech. College, 3315 University Drive, Bismarck, North Dakota 58511; Grant Number: 99-1-0206-55-155-02	179,066	143,253	35,813	0	0	0
North American Indian Cultural Centers, 1062 Triplette Boulevard, Akron, Ohio 44306; Grant Number: 99-1-3349-55-242-02	757,425	605,940	151,485	0	0	0

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Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Caddo Tribe of Oklahoma, P.O. Box 487, Binger, Oklahoma 73009; Grant Number: 99-1-1783-55-198-02	29,168	23,334	5,834	11,806	9,445	2,361
Central Tribes of the Shawnee Area, Inc., 121 West 45th Street, Shawnee, Oklahoma 74801; Grant Number: 99-1-0038-55-102-02	84,501	67,601	16,900	47,044	37,635	9,409
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465; Grant Number: 99-1-0027-55-093-02	1,476,283	1,181,026	295,257	706,286	565,029	141,257
Cheyenne-Arapaho Tribes, P.O. Box 67, Concho, Oklahoma 73022; Grant Number: 99-1-0048-55-111-02	198,254	158,603	39,651	88,410	70,728	17,682
Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Oklahoma 74820; Grant Number: 99-1-0042-55-105-02	395,801	316,641	79,160	180,695	144,556	36,139
Choctaw Nation of Oklahoma, Drawer 1210, Durant, Oklahoma 74702-1210; Grant Number: 99-1-0041-55-104-02	806,071	644,857	161,214	317,410	253,928	63,482
Citizens Band Potawatomi Indians, 1901 South Gordon Cooper Drive, Shawnee, Oklahoma 74801; Grant Number: 99-1-2202-55-206-02	199,760	159,808	39,952	148,341	118,673	29,668
Comanche Indian Tribe of Oklahoma, P.O. Box 908, Lawton, Oklahoma 73502; Grant Number: 99-1-3150-55-228-02	164,396	131,517	32,879	114,275	91,420	22,855
Creek Nation of Oklahoma, P.O. Box 580, Okmulgee, Oklahoma 74447; Grant Number: 99-1-0025-55-091-02	600,669	480,535	120,134	341,382	273,106	68,276
Four Tribes Consortium of Oklahoma, P.O. Box 1193, Anadarko, Oklahoma 73005; Grant Number: 99-1-2728-55-220-02	75,352	60,282	15,070	35,418	28,334	7,084
Inter-Tribal Council of N.E. Oklahoma, P.O. Box 1308, Miami, Oklahoma 74355; Grant Number: 99-1-1135-55-183-02	52,660	42,128	10,532	34,427	27,542	6,885
Kiowa Tribe of Oklahoma, P.O. Box 369, Carnegie, Oklahoma 73015; Grant Number: 99-1-0047-55-110-02	213,451	170,761	42,690	81,741	65,393	16,348
Oklahoma Tribal Assistance Program, Inc., 1806 East 15th Street, P.O. Box 2841, Tulsa, Oklahoma 74101; Grant Number: 99-1-0072-55-125-02	348,476	278,781	69,695	187,544	150,035	37,509
Osage Tribal, Council, P.O. Box 147—Osage Agency Campus, Pawhuska, Oklahoma 74056; Grant Number: 99-1-0022-55-090-02	106,391	85,113	21,278	73,269	58,615	14,654
Otoe-Missouria Indian Tribe of Okla., P.O. Box 62—Route 1, Red Rock, Oklahoma 74651; Grant Number: 99-1-2730-55-221-02	37,760	30,208	7,552	20,007	16,006	4,001
Pawnee Tribe of Oklahoma, P.O. Box 470, Pawnee, Oklahoma 74058; Grant Number: 99-1-1785-55-200-02	24,019	19,215	4,804	15,591	12,473	3,118
Ponca Tribe of Oklahoma, White Eagle—Box 2, Ponca City, Oklahoma. 74601; Grant Number: 99-1-0029-55-094-02	56,632	45,306	11,326	46,052	36,842	9,210
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, Oklahoma 74884; Grant Number: 99-1-0051-55-113-02	151,612	121,290	30,322	64,167	51,334	12,833
Tonkawa Tribe of Oklahoma, P.O. Box 70, Tonkawa, Oklahoma 74653; Grant Number: 99-1-1136-55-184-02	44,729	35,783	8,946	45,151	36,121	9,030
United Urban Indian Council, 1501 Classen BLVD., Suite 100, Oklahoma City, Oklahoma 73106-5435; Grant Number: 99-1-2731-55-222-02	313,949	251,159	62,790	210,615	168,492	42,123
Confed. Tribes of Siletz Indians, P.O. Box 549, Siletz, Oregon 97380, Grant Number: 99-3153-55-229-02	625,667	500,534	125,133	13,248	10,598	2,650
Confed. Tribes of the Umatillaind. Res., P.O. Box 638, Pendleton, Oregon 97801; Grant Number: 99-1-3065-55-225-02	46,416	37,133	9,283	15,681	12,545	3,136
Confederate Tribes of Warm Springs, P.O. Box C—Tenino Road, Warm Springs, Oregon 97761; Grant Number: 99-1-0256-55-157-02	97,953	78,362	19,591	40,735	32,588	8,147
Organization of Forgotten Americans, P.O. Box 1257, 4509 South 6th Street, Suite 206, Klamath Falls, Oregon 97601-0276; Grant Number: 99-1-2732-55-223-02	455,577	364,462	91,115	3,965	3,172	793
Council of Three Rivers, 200 Charles Street, Pittsburgh, Pennsylvania 15238; Grant Number: 99-1-0642-55-172-02	723,309	578,647	144,662	0	0	0
United AM, Indians of the Del. Valley, 225 Chestnut Street, Philadelphia, Pennsylvania 19106; Grant Number: 99-1-0477-55-163-02	206,788	165,430	41,358	0	0	0
Rhode Island Indian Council, 444 Friendship St., Providence, Rhode Island 02907; Grant Number: 99-1-0510-55-169-02	399,785	319,828	79,957	0	0	0
Catawba Indian Nation, P.O. Box 957, Rock Hill, South Carolina 29731; Grant Number: 99-1-3516-55-249-02	276,216	220,973	55,243	10,995	8,796	2,199
Cheyenne River Sioux Tribe, P.O. Box 837, Eagle Butte, South Dakota 57625; Grant Number: 99-1-0039-55-103-02	236,326	189,061	47,265	79,217	63,374	15,843
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, South Dakota 57548; Grant Number: 99-1-0073-55-126-02	59,891	47,913	11,978	13,879	11,103	2,776
Oglala Sioux Tribe, P.O. Box G, Pine Ridge, South Dakota 57770; Grant Number: 99-1-0043-55-106-02	745,823	596,658	149,165	217,645	174,116	43,529
Rosebud Sioux Tribe, Box 430, Rosebud, South Dakota 57570; Grant Number: 99-1-0044-55-107-02	441,775	353,420	88,355	110,670	88,536	22,134

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Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, South Dakota 57262; Grant Number: 99-1-0045-55-108-02	172,063	137,650	34,413	46,863	37,490	9,373
United Sioux Tribes Dev. Corp., P.O. Box 1193, Pierre, South Dakota 57501; Grant Number: 99-1-0165-55-144-02	730,863	584,690	146,173	61,103	48,882	12,221
Native American Indian Association, 211 Union Street, Suite 932, Stahlman Building, Nashville, Tennessee 37501; Grant Number: 99-1-3515-55-248-02	352,277	281,822	70,455	0	0	0
Alabama-Coushatta, Indian Tribal Council, Route 3—Box 645, Livingston, Texas 77315; Grant Number: 99-1-1784-55-199-02	684,735	547,788	136,947	5,137	4,110	1,027
Dallas Inter-Tribal Center, 209 East Jefferson Blvd., Dallas, Texas 75203-2690; Grant Number: 99-1-0078-55-131-02	281,009	224,807	56,202	0	0	0
Tigua Indian Tribe, 119 South Old Pueblo Road—Ysleta Station, El Paso, Texas 79917; Grant Number: 99-1-2099-55-202-02	467,717	374,174	93,543	11,265	9,012	2,253
Indian Center Employment Services, Inc., 1865 South Main Suite 1, Salt Lake City, Utah 84115; Grant Number: 99-1-3517-55-250-02	429,346	343,477	85,869	0	0	0
Ute Indian Tribe, P.O. Box 190, Fort Duchesne, Utah 84026; Grant Number: 99-1-0049-55-112-02	77,163	61,730	15,433	33,976	27,181	6,795
Abenaki Self-Help Assn/N.H. Ind. Counc., Box 276, Swanton, Vermont 05488; Grant Number: 99-1-3064-55-224-02	114,335	91,468	22,867	0	0	0
Mattaponi Pamunkey Monacan Consortium, Route 2—P.O. Box 360 West Point, Virginia 23181; Grant Number: 99-1-3227-55-236-02	248,137	198,510	49,627	1,532	1,226	306
American Indian Community Center, East 905 Third Avenue, Spokane, Washington 99202; Grant Number: 99-1-1138-55-186-02	737,760	590,208	147,552	113,824	91,059	22,765
Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155; Grant Number: 99-1-1726-55-192-02	209,289	167,431	41,858	48,215	38,572	9,643
Lummi Indian Business Council, 2616 Kwinda Road, Bellingham, Washington 98225; Grant Number: 99-1-2204-55-256-02	45,919	36,735	9,184	19,106	15,285	3,821
N.W. Inter-Tribal Council, P.O. Box 115, Neah Bay, Washington 98357; Grant Number: 99-1-0069-55-174-02	47,649	38,119	9,530	31,543	25,234	6,309
Puyallup Tribe of Indians, 2002 East 28th St., Tacoma, Washington 98404; Grant Number: 99-1-1137-55-185-02	168,970	135,176	33,794	19,196	15,357	3,839
Seattle Indian Center, 611 12th Avenue South—Suite 300, Seattle, Washington 98144; Grant Number: 99-1-0511-55-170-02	442,645	354,116	88,529	0	0	0
Western Wash. Inc. Empl. and Trng. Prog., 4505 Pacific Highway East, Suite C-1, Tacoma, Washington 98424; Grant Number: 99-1-1933-55-201-02	890,444	712,355	178,089	125,901	100,721	25,180
Lac Courte Oreilles Tribal Governing Board, Route 2, Box 2700, Hayward, Wisconsin 54843; Grant Number: 99-1-0018-55-087-02	100,311	80,249	20,062	24,603	19,682	4,921
Lac Du Flambeau of Lake Superior Chippewa, P.O. Box 67, Lac Du Flambeau, Wisconsin 54538; Grant Number: 99-1-1139-55-187-02	48,296	38,637	9,659	18,926	15,141	3,785
Menominee Indian Tribe, P.O. Box 397, Keshena, Wisconsin 54135-0397; Grant Number: 99-1-0013-55-084-02	76,616	61,293	15,323	46,142	36,914	9,228
Milwaukee Area Am. Ind. Manpower Counc., 634 West Mitchell Street, Milwaukee, Wisconsin 53204-3512; Grant Number: 99-1-0227-55-156-02	237,503	190,002	47,501	0	0	0
Oneida Tribe of Indians of Wis., Inc., P.O. Box 365, Oneida, Wisconsin 54115-0365; Grant Number: 99-1-0015-55-085-02	210,547	168,438	42,109	30,551	24,441	6,110
Stockbridge-Munsee Community, Route 1, Bowler, Wisconsin 54416; Grant Number: 99-1-0500-55-167-02	63,993	51,194	12,799	9,102	7,282	1,820
Wisconsin Indian Consortium, P.O. Box 181, Odanah, Wisconsin 54861; Grant Number: 99-1-2207-55-207-02	94,073	75,258	18,815	25,685	20,548	5,137
Wisconsin-Winnebago Business Committee, P.O. Box 667—127 Main Street, Black River Falls, Wisconsin 54615; Grant Number: 99-1-0019-55-088-02	204,249	163,399	40,850	14,600	11,680	2,920
Shoshone/Arapahoe Tribes, P.O. Box 920, Fort Washakie, Wyoming 82514; Grant Number: 99-1-0050-55-252-02	230,123	184,098	46,025	68,853	55,082	13,771
National Total	$63,000,000	$50,399,998	$12,600,002	$12,418,726	$9,934,983	$2,483,743

[FR Doc. 92-1094 Filed 1-14-92; 8:45 am]
BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H-1A nurse attestation process. Call Telephone Number: 202-535-0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H-1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H-1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H-1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H-1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H-1A attestation (however, see the telephone number regarding complaints, set forth below;) and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The listing of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section to this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 8th day of January 1992.

Robert J. Litman,

Acting Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 12/01/91 TO 12/31/91

CEO-name/facility name/address	State	Approval date
Mr. Richard A. Pierson, The U. Hospital of Arkansas, 4301 West Markham—Slot 526, Little Rock, 72205, 501-686-6096	AR	12/13/91
Joseph J. DeSilva, St. Joseph Hospital & Medical, 350 W. Thomas Road, Phoenix, Arizona, 85013, 602-285-3000	AZ	12/13/91
Mr. Scott Tibbits, Santa Monica Hosp. Med. Ctr., 1250 16th St., Santa Monica, 90404, 310-319-4000	CA	12/13/91
Jerry Gillman, Midway Hospital Medical Ctr., 5925 San Vicente Blvd., Los Angeles, California, 90019, 213-938-3161	CA	12/13/91
Mr. C. David Wilcox, Hillhaven Lawton Conval. Hosp., 1575 7th Avenue, San Francisco, 94122, 415-566-1200	CA	12/18/91
Children's Hosp. of Orange, 455 S. Main Street, Orange, 92668, 714-997-3000	CA	12/20/91
Mr. Charles S. Koch, Sharp Memorial Hospital, 7901 Frost Street, San Diego, CA, 92123, 619-541-3222	CA	12/20/91
Albert C. Mour, Eisenhower Medical Center, 39000 Bob Hope Drive, Rancho Mirage, CA, 92270, 619-340-3911	CA	12/20/91
Mr. Ronald C. Phelps, Brotman Medical Center, 2838 Delmas Terrace, Culver City, 90232, 213-836-7000	CA	12/27/91
Mr. Mark A. Meyers, Garden Grove Hosp. & Med. Ctr., 12601 Garden Grove Blvd., Garden Grove, 92643, 714-537-5160	CA	12/27/91
Mr. Russell Stromberg, Centinela Hosp. Med. Ctr., 555 East Hardy Street, Inglewood, 90307, 213-419-3624	CA	12/27/91
Mr. Mark Chastang, D.C. General Hosp., 1900 Mass. Ave., S.E., Washington, 20003, 202-675-5465	DC	12/20/91
Mr. Bob A. Dodd, Adventist Health System, Sunbelt, Inc., Zephyrhills, 33541, 813-788-0411	FL	12/02/91
Ms. Nettie Dunaway, Sunset Point Nursing Center, 1980 Sunset Point Road, Clearwater, 34625, 813-443-1588	FL	12/06/91
Ms. Liz Kern, Hospice of the Florida Keys, Visting Nurses Association, Key West, 33040, 305-294-8812	FL	12/06/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 12/01/91 TO 12/31/91—Continued

CEO-name/facility name/address	State	Approval date
Denny Powell, Gulf Coast Hospital, 13681 Doctors Way, Ft. Meyers, Florida, 33912, 813-768-8687	FL	12/11/91
Mr. James E. Rogers, Palm Beach Regional Hospital, 2829 10th Avenue North, Lake Worth, 33461, 407-967-7800	FL	12/13/91
Mr. D. Wayne Bracklin, SMH Homestead Hospital, 160 NW 13 St., Homestead, 33030, 305-248-3232	FL	12/13/91
Mr. Richard J. Stull, II, Broward General Med. Ctr., 1600 South Andrews Ave., Ft. Lauderdale, 33316, 305-355-4400	FL	12/27/91
Richard J. Stull, II, North Broward Medical Center, Pompano Beach, 33064, 305-786-6400	FL	12/27/91
Mr. Richard J. Stull, II, Imperial Point Med. Ctr., 6401 North Federal Hwy., Ft. Lauderdale, 33308, 305-776-8500	FL	12/27/91
Richard J. Stull, II, Coral Springs Medical Center, Coral Springs, 33065, 305-344-3000	FL	12/27/91
Sr. M. Jacqueline, St. Patrick's Residence, 1400 Brookdale Road, Naperville, 60563, 708-416-6565	IL	12/05/91
Mr. John N. Weston, Parlane Nursing Centre, 9125 South Pulaski, Evergreen Pk., 60642, 708-425-3400	IL	12/13/91
Ms. Joann Birdzell, St. Elizabeth's Hospital, 1431 N. Claremont Ave., Chicago, 60622, 312-633-5917	IL	12/13/91
Mr. Leonard Koenig, Yorkdale Healthcare Ctr., Ltd., 2313 N. Rockton Ave., Rockford, 61103, 815-964-4611	IL	12/20/91
Mr. Hugh Canady, The Lincoln Home, Inc., 150 N. 27th Street, Belleville, 62223, 618-235-6600	IL	12/20/91
Mr. Herman Froy, Burnham Terrace, Ltd., 14500 S. Manistee, Burnham, 60633, 708-862-1260	IL	12/20/91
Mr. Pat Hikes, Community Care Ctr., Inc., 4314 S. Wabash Ave., Chicago, 60653, 312-538-8300	IL	12/20/91
Ms. Marianne Araujo, Mercy Hosp. and Med. Ctr., Stevenson Expwy. at King Dr., Chicago, 60616, 312-567-2000	IL	12/27/91
G. Rodney Wolford, Norton Hospital, Alliant Health System, Louisville, 40232, 502-629-8400	KY	12/17/91
G. Rodney Wolford, Kosair Children's Hospital, Louisville, 40231, 502-629-8400	KY	12/17/91
Francis P. Kirley, Worcester County Hospital, 80 Paul Ware Drive, Boylston, 01505, 508-852-1533	MA	12/20/91
Mr. Greg J. Bailey, Microsurgery & Brain Research Institute, P.C., St. Louis, 63109, 314-644-7111	MO	12/13/91
Ms. Patricia G. Webb, Wake Medical Center, 3000 New Bern Avenue, Raleigh, 27610, 919-250-8138	NC	12/20/91
Mr. Tom Boerboom, Park Place Nursing Center, 610 N. Darr, Grand Island, 68803, 308-382-2635	NE	12/06/91
Dr. William O. Berndt, U. of Nebraska Med. Ctr., 600 S. 42nd Street, Omaha, Nebraska, 68198, 402-559-4201	NE	12/13/91
Marilyn Pomeroy, Cedar Grove Manor, 398 Pompton Avenue, Cedar Grove, New Jersey, 07009, 201-239-7600	NJ	12/13/91
Mark D. Pilla, Community Medical Center, 99 Highway 37 West, Toms River, New Jersey, 08755, 908-240-8007	NJ	12/23/91
Mr. Lester M. Bornstein, Newark Beth Israel Med. Ctr., 201 Lyons Avenue, Newark, 07112, 201-926-7000	NJ	12/27/91
Mr. Richard Mendoza, Northeastern Reg'l Hospital, 1235 8th Street, Las Vegas, 87701, 505-425-6751	NM	12/27/91
Mr. James M. Toomey, El Jen Convalescent Hospital, 5538 West Duncan Drive, Las Vegas, 89130, 702-645-1900	NV	12/20/91
Gary Gambuti, St. Luke's-Roosevelt Hospital, 428 West 59th Street, New York, New York, 10019, 212-523-2162	NY	12/11/91
Mr. J. David Niday, Camphaven Manor, 63 Blackstock Road, Inman, 29349, 803-472-9055	SC	12/13/91
Mr. Joseph H. Powell, Baptist Memorial Hospital, Employment Service, Memphis, 38146, 902-227-5090	TN	12/06/91
Mr. Douglas Langley, Memorial Hospital, Hwy. 90-A Bypass, Gonzales, 78629, 512-672-7581	TX	12/05/91
Mr. David Buchmueller, Providence Memorial Hospital, 2001 North Oregon, El Paso, TX, 79902, 915-542-6662	TX	12/13/91
Nelson A. Sin, Int'l Medical Personnel Co., 9894 Bissonnet, Houston, 77036, 713-771-1211	TX	12/20/91
Mr. David B. Dildy, East Texas Med. Ctr.-Tyler, 75701, S. Beckham, Tyler, 75701, 903-531-8016	TX	12/27/91
Mr. A. Jason Geisinger, Wasatch Villa Conval. Center, First Healthcare Corp., d.b.a., Salt Lake City, 84109, 801-486-2096	UT	12/06/91
Mr. Charles V. Rice, Int'l Health Services, Inc., 5723 Centre Square Drive, Centreville, 22020, 703-222-3900	VA	12/19/91
Total Attestations: 51		

[FR Doc. 92-1093 Filed 1-14-92; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biotic Systems and Resources

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for award. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biotic Systems and Resources.

Dates and Times: February 2 and 3, 1992, 7 a.m.–5 p.m.

Location: Holiday Inn Crowne Plaza Hotel, 775 12th Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Presidential Faculty Fellows Program Proposals.

Contact Person: Penelope Firth, Program Director, Special Programs, room 215, National Science Foundation, Washington, DC 20550.

Telephone: (202) 357-3978.

Dated: January 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-965 Filed 1-14-92; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for award. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of U.S.C. 552b (c), Government in the Sunshine Act.

Name: Advisory Panel for Systematic Biology.

Dates & Times: February 2, 1992, 12 a.m.–6 p.m.; February 3, 1992, 6 a.m.–7 p.m.; February 4, 1992, 8 a.m.–5 p.m.

Location: Holiday Inn, Rhode Island Ave. at 17th Street, NW., Washington, DC 20036.

Type of Meeting: Closed.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Contact Person: Terry Yates, Program Director, Systematic Biology Program, room 215, National Science Foundation, Washington, DC 20550.

Telephone: (202) 357-9588.

Dated: January 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-964 Filed 1-14-92; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from various requirements of 10 CFR part 50, appendix J to the Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions applicable for one cycle of operation, from the periodic retest requirements for performing Type C tests, set forth in 10 CFR part 50, appendix J, section III. Type C tests measure containment isolation valve leakage rates. Type C test requirements are set forth in appendix J, section III.C. The exemptions would apply to four containment penetrations at the Haddam Neck Plant. These penetrations are P-8, Reactor Coolant System Charging; P-33, Refueling Cavity Purification; P-62, Service Air to Containment; and P-78, Relief Tank Drain. For penetrations P-33, P-62, and P-78, the Type C test would be performed but in the reverse-direction specified in III.C.1 of appendix J. For P-8, no Type C test would be performed until the Cycle 17 refueling outage. The proposed action is in accordance with the licensee's request for schedular exemptions dated December 20, 1991.

The Need for the Proposed Action

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. In particular, for P-8, CYAPCO seeks exemption, for one refueling outage, from the requirement of performing the Type C test. For the other three penetrations, the exemptions would allow deviation from the requirements of how the Type C test is performed.

The licensee seeks the requested exemptions because performance of the Type C tests as required by appendix J would require modifications to the penetrations or replacement of the valves.

Environmental Impacts of the Proposed Action

The staff has reviewed the proposed exemptions and has concluded that the schedular exemptions from various requirements of 10 CFR part 50, appendix J, section III.C. Type C tests for penetrations P-8, P-33, P-62 and P-78 will not compromise containment integrity. This conclusion is based, in general, on the periodic containment integrated leak rate test and the design or function of the valves which provide some compensatory measures to assure leak tightness of the valve. In addition, for penetrations P-33, P-62 and P-78, the Type C test is performed but in the reverse direction.

Thus, radiological releases will not differ from those determined previously and the proposed exemptions do not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemptions do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to deny the exemptions requested. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this proposed action, see the licensee's letter dated December 20, 1991 which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland this 9th day of January 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1046 Filed 1-14-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 39th meeting on January 15 (1 p.m.-5 p.m.), 16 and 17, 1992, 8:30 a.m.-5 p.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to public attendance. This meeting was previously published in the **Federal Register** Friday, December 27, 1991 (56 FR 67106).

The agenda for the subject meeting shall be as follows:

A. Continue deliberations to investigate the feasibility of a systems analysis approach to reviewing the overall high-level waste program with the goal of reporting back to the Commission the ACNW's recommendations as to the scope of such a review and the advisability of the ACNW undertaking it.

B. Review and comment on a revision to NUREG-1200, Standard Review Plan for a Low-Level Waste Facility.

C. Briefed by NRC's Office of Research on planned research in the area of high-level waste.

D. Discuss a paper to be given at the January 29-31, 1992, Low-Level Waste Forum Winter Meeting.

E. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only

by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: January 9, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–1044 Filed 1–14–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Guidance for New Restrictions on Lobbying

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides further information about, and proposes changes to, OMB's interim final guidance, published December 20, 1989, as called for by Section 319 of Public Law 101–121, and OMB's clarification notice, published June 15, 1990.

DATES: Comments on this proposal must be in writing and must be received by March 16, 1992. Late comments will be considered to the extent practicable. The effective date of the interim final guidance was December 23, 1989.

ADDRESSES: Office of Management and Budget, 725 17th Street, NW., room 10300, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For contracts, Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB (telephone: 202–395–3254). For grants and loans, contact Barbara F. Kahlow, Office of Federal Financial Management, OMB (telephone: 202–395–3053).

SUPPLEMENTARY INFORMATION: On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended title 31, United States Code, by adding a new Section 1352, entitled, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that were entered into or made more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 required the Director of the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of this section. Interim final guidance was published on December 20, 1989 (54 FR 52306), effective December 23, 1989. On June 15, 1990, OMB published a notice (55 FR 24540) to inform the public about certain clarifications which OMB had made since the December 20, 1989 publication. These included replies to two letters addressed to OMB from Members of Congress. In addition, OMB had issued an internal governmentwide memorandum which was reproduced in the notice.

Section 318 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1991 amended the earlier Act by expanding on the $150,000 threshold for the certification and disclosure reporting requirements for loans and loan insurance and guarantee commitments by adding the following language: "or the single family maximum mortgage limit for affected programs, whichever is greater."

To date, as required by the Act, there have been four agency semi-annual compilations of disclosure reports and the first annual agency Inspector General reports submitted to Congress. In addition, on September 25, 1991, the General Accounting Office (GAO) offered several recommendations. Based on OMB's review of these reports, OMB believes that the following additional clarifications are needed at this time. Also, OMB is proposing some changes for public comment. OMB is not finalizing the OMB guidance at this time because of possible changes to this statute and other statues related to lobbying.

Proposed Changes

Based on the limited number of disclosure reports filed to date, the law may not be achieving one of its intended purposes. That is, some influencing activities for covered Federal actions by other than own employees of those doing business with the Federal Government are not now being disclosed. Both the Department of Defense Inspector General and the GAO have recommended that OMB's guidance be clarified to fulfill the Act's intended purpose. In particular, they emphasized that OMB should ensure that all covered Federal actions which result from attempts at influencing Congressional action be fully covered by the Act's prohibition on the use of appropriated funds and its disclosure provisions regarding the use of nonappropriated funds. Therefore, OMB is proposing the following changes, for which public comment is invited:

1. OMB proposes to amend the June 15, 1990 clarification on "program lobbying." The notice stated, at 55 FR 24542:

> "The prohibition on use of Federal appropriated funds does not apply to influencing activities not in connection with a specific covered Federal action. These activities include those related to legislation and regulations for a program versus a specific covered Federal action."

This exemption may have been interpreted too broadly to exclude most disclosure requirements on "program lobbying," even when such activity results in influencing covered Federal actions. Therefore, the guidance is proposed to be revised to revoke the foregoing clarification and to indicate that the following activities are, in fact, covered by the Act, and accordingly require disclosure, and cannot be undertaken with appropriated funds:

> Activities to influence Congressional or Executive Branch action on a provision of a bill or report that would direct the funding of, or indicate an intent to fund, a covered Federal action.

Under the revised guidance, activities to influence the earmarking of funds for a particular program, project or activity in an appropriation, authorization or other bill or in report language would be included within that Act's restrictions. Included in this coverage would be situations in which a person already is the recipient of a covered Federal action and seeks to influence Congress or the Executive Branch to provide, on a non-competitive basis, a follow-on or a

continuation of that covered Federal action.

Example: A manufacturer of aircraft hires a consultant to engage in influencing activities on its behalf. The consultant contacts Congressional staff in an effort to influence action on language in an appropriations bill that would allocate money for a particular program for the procurement of transport aircraft. The contractor later bids on a contract for the transport aircraft funded under that appropriation. The influencing activities of the consultant must be disclosed by the manufacturer when the bid is submitted.

2. OMB also proposes to clarify when covered influencing activities paid for with nonappropriated funds must be disclosed. Disclosure must be made by the party whose submission initiates an agency's consideration of a covered Federal action. Influencing paid for or funded by a third party ("third party lobbying") shall be disclosed. In such cases, disclosure is required only when the influencing relates to covered Federal action for a specifically identifiable party or parties, and not for funds distributed to a broad class of parties.

Example 1: A national membership association of public transit systems has several hundred members and engages in general advocacy for increased funding for public transit. With regard to a particular bill, the association lobbies Congressional Members and staff in support of an increase in the appropriation for public transportation systems. Because the influencing activity does not advocate earmarking awards for particular projects or awards to particular public transit systems which are members of the association, reporting of the influencing activity is not required.

Example 2: The same association in conducting its legislative lobbying program, advocates earmarking of funds for particular public transit systems' projects. This constitutes third party lobbying and is subject to the reporting requirements of the Act.

3. The certification would be amended to add a check mark to indicate whether nonappropriated funds were used for influencing activities, other than allowable professional and technical services, by other than own employees. The check mark would indicate to the Federal Government that a SF–LLL disclosure form is required to be submitted with the certification.

Clarifications

OMB is now making the following additional clarifications to its interim final guidance. These are in addition to the clarifications published in the June 15, 1990 notice:

1. The GAO report stated that "Ambiguity exists in the amendment and the OMB guidance on when disclosure forms are due. * * * If it is intended that submissions without the certification be rejected, the amendment and the guidance need to be clarified." OMB believes that Congressional intent was for certification and disclosure at application, not award. However, OMB concurs in the GAO recommendation that Congressional clarification on this point is desirable.

2. GAO asked OMB to make four clarifications regarding disclosure reporting:

(a) The SF–LLL, "Disclosure of Lobbying Activities," asks for "Amount of Payment" and the accompanying instructions state "Enter the amount of compensation paid or reasonably expected to be paid * * *" The total amount of the payment, not the rate of payment, is to be reported.

(b) The SF–LLL asks for a "Brief Description of Services Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted * * *" and the accompanying instructions state "Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform * * *" A brief, but specific and detailed description of the services performed, using nonappropriated funds, is required.

(c) Agencies should check for completeness of all disclosure forms which are submittted.

(d) No disclosure reporting is required for activities undertaken by one's own employees.

Allan V. Burman,

Administrator for Federal Procurement Policy.

Edward J. Mazur,

Controller Office of Federal Financial Management.

[FR Doc. 92–996 Filed 1–14–92; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30168; File No. SR–DGOC–91–03]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving a Proposed Rule Change Relating to the Definition of Exercise Price

January 8, 1992.

On November 15, 1991, Delta Government Options Corp. ("DGOC") filed a proposed rule change (File No. SR–DGOC–91–03) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 27, 1991, to solicit comments from interested persons.[2] DGOC amended the proposal on December 12, 1991 [3] and December 31, 1991.[4] No comments were received. As discussed below, this order approves the proposal.

I. Description of the Proposal

The proposal amends the definition of "exercise price" contained in Article I section 101 of DGOC's Procedures so that exercise prices for option contracts on Treasury bills, notes, and bonds shall be in whole numbers and sixteenths.[5] Currently, the exercise price for an option contract on Treasury bonds or Treasury notes with a remaining term to maturity of three years or more is stated in whole numbers and halves, and the exercise price for an option contract on Treasury bills or Treasury notes with a remaining term to maturity of less than three years is stated in whole numbers and quarters. Thus, the proposal allows option contracts on Treasury bills, notes, and bonds with exercise prices in gradations as small as sixteenths to be cleared and settled at DGOC.[6]

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29977 (November 21, 1991), 56 FR 60137.

[3] Letter from Robert C. Mendelson, Esq., Morgan, Lewis & Bockius, to Jerry Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (December 12, 1991) ("Amendment No. 1").

[4] Letter from Robert C. Mendelson, Esq., Morgan, Lewis & Bockius, to Scott Wallner, Staff Attorney, Division, Commission (December 31, 1991) ("Amendment No. 2").

[5] As published in the **Federal Register**, DGOC's initial proposal would have amended DGOC's Procedures so that "exercise price" would be defined as the price stated in whole numbers and quarters for an option contract on a Treasury bond or note with a remaining term to maturity of three years or more or the price stated in whole numbers and sixteenths for an option contract on a Treasury bill or note with a remaining term to maturity of less than three years. In Amendment No. 1, DGOC amended the rule filing by having the gradations for all exercise prices for option contracts on Treasury bills, notes, or bonds be in sixteenths. *Supra* note 2. In Amendment No. 2, DGOC amended the language of the definition of "exercise price" to clarify its meaning. The change did not materially alter the substance of the proposal. *Supra* note 3.

[6] Exercise prices for options on Treasury securities are stated in whole numbers and two digit decimal fractions representing thirty-seconds ("32nds"). Currently, for the purpose of setting an exercise price, such decimal fractions may be stated so that they are capable of being reduced into halves or quarters depending upon the type of treasury security involved. For example, an option on a Treasury bond might have as its exercise price $102.16. Because the decimal fraction represents 32nds, the exercise price would be 102^{16}/_{32}$s or $102½. As proposed, exercise prices for options on Treasury securities will continue to be stated in whole numbers and two digit decimal fractions representing 32nds, but now option contracts on

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According to DGOC, it filed the proposal in order to respond to DGOC participants' ("Participants") requests for finer gradations in options prices.

II. Discussion

The Commission believes that DGOC's proposal is consistent with the Act and particularly with section 17A(b)(3)(F).[7] That section requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes DGOC's proposal will promote and facilitate the prompt and accurate clearance and settlement of over-the-counter ("OTC") Treasury options within an automated clearing facility subject to Commission oversight.

Market participants trade OTC Treasury options to hedge against or speculate on changes in Treasury security interest rates. In particular, OTC Treasury options enable market participants to tailor option terms, such as the exercise price, to their individual needs.[8] DGOC's proposal to define "exercise price" to include OTC Treasury options with finer gradations of exercise prices will provide a broader range of OTC Treasury options that can be cleared and settled through DGOC. This should afford Participants additional flexibility in the OTC Treasury options traded in relation to their Treasury security portfolios.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that DGOC's proposed rule change (SR–DGOC–91–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–986 Filed 1–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30170; File No. SR–GSCC–91–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Order Granting Temporary Approval, on an Accelerated Basis, of a Proposed Rule Change Relating to Yield Trades Converted to Priced Trades at the Time of Comparison

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on November 15, 1991, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below. This order grants accelerated approval of GSCC's proposal on a temporary basis until January 31, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend the time period for GSCC to implement the conversion service for yield-based trades. The conversion service, which was approved by the Commission on a temporary basis through January 31, 1992,[1] allows GSCC to net, prior to the U.S. Treasury ("Treasury") auction, trades submitted by participating members [2] in Treasury note and bond issues that have been executed on the basis of the current market yield.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 24, 1991, pursuant to section 19(b) of the Act, GSCC filed with the Commission a proposed rule change (File No. SR–GSCC–91–01) that provides authority for GSCC to implement a yield-to-price conversion feature and to net trades that have been compared on a yield basis. On September 24, 1991, the Commission approved the proposal on a temporary basis until January 31, 1992.

GSCC has not yet implemented the proposed yield-to-price conversion feature or begun to net yield trades; it expects to do so during the first quarter of 1992. In view of this, GSCC is requesting that the temporary approval period for the proposal be extended. In order that GSCC and its membership be able to gain sufficient experience in converting and netting yield trades prior to making the conversion feature mandatory for all netting members, GSCC is requesting that the period of extended temporary authority be for at least one year.

GSCC's rationale for seeking authority to implement a yield-to-price conversion feature, and to net trades that have been compared on a yield basis, is set forth below.

New Treasury note and bond issues are auctioned on a yield-to-maturity basis, reflecting the rate of return realized if the security is held to maturity and if coupon interest payments are reinvested at such yield. Firms that trade notes and bonds in the secondary market on a when-issued basis during the time period from announcement to auction do so based on the then current market yield without knowledge of what the coupon actually will be.[3] During that period, such firms

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Treasury bills, notes, or bonds that have exercise prices where the decimal fractions may be in gradations as small as sixteenths may be cleared and settled at DGOC. For example, an option on a Treasury bond might have as its exercise price $102.02. Again, because the decimal fraction represents 32nds, the exercise price would be 102^{2}/_{32}$ or 102^{1}/_{16}$.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] A comprehensive description of the OTC treasury options market and of DGOC's Over-the-Counter Options Trading System is in Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] Securities Exchange Act Release No. 29732 (September 24, 1991), 56 FR 49937.

[2] The initial proposed rule change (File No. SR–GSCC–91–01) was designed to allow GSCC to convert yield-based trades between participating members to priced trades at the time of comparison. After the proposal was filed, the Commission approved GSCC's proposal to compare and net trades executed by non-members if those trades were submitted by members and were otherwise eligible for GSCC's netting system. Securities Exchange Act Release No. 30078 (December 13, 1991), 56 FR 66110. Accordingly, this order reflects the intervening rule change.

[3] GSCC members frequently trade not only before issuance of the securities but also before an

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can use a standard Treasury Department conversion formula and an assumed coupon rate to derive the prices of trades that they have done in a security on a yield basis; this might be done, for example, for internal surveillance purposes in order to monitor the firm's credit exposure.

After the auction is completed and the coupon rate is established, the price charged each successful auction bidder for the securities that it has bid on is calculated so that the yield to maturity on the securities equal the yield that was bid.

Currently, when-issued trades submitted to GSCC are eligible for the net only if they have been compared by GSCC, post-auction, on a final price basis. Data on when-issued trades in notes and bonds submitted prior to auction, even if successfully compared on a yield basis, must be resubmitted after auction for comparison on a final price basis in order to be eligible for GSCC's netting and novation process and the credit protection that it provides.

In order to make available to netting members the protection and efficiency provided by netting as soon as possible after the trading in eligible securities commences, GSCC proposes to automatically convert yield trades into priced trades at the time of their comparison on a yield basis, based on an assumed coupon.[4] This would (1) Allow such yield trades to be netted, novated and marked-to-the-market in the same manner as are final money trades as early as the night after the trade is entered into (assuming that the trade is compared on a yield basis), and (2) eliminate the need for double submission of when-issued trades.

Only Treasury notes and bonds would be eligible for yield-to-price conversion. Yield data would be converted and compared with data submitted on a price basis from auction date until maturity date. Forward net settlement positions comprised in whole or in part of converted trades pre-auction would be included in the calculation of such members' required clearing fund deposits[5] and forward mark allocation amounts[6] in the same manner as if data on the trades had been submitted post-auction on a price basis.

During the temporary approval period, members would be permitted to choose not to participate in the conversion process. Such members would have to continue to resubmit trade data post-auction on a final money basis. Obviously, GSCC would not routinely collect forward mark allocations or clearing fund contributions from non-participating members. Nevertheless, to monitor non-participating member financial condition and credit exposures, GSCC would calculate on each business day a non-participating member's forward mark allocation and clearing fund requirement based on the assumption that the non-participating member's matched trades were included in the net.[7] GSCC would expressly reserve the right to collect clearing fund deposits and forward mark allocation monies from any such member if any time during the pre-auction period GSCC determines that the non-participating clearing member no longer satisfies GSCC's membership criteria for financial responsibility reasons.[8]

GSCC would derive a standard yield-to-price conversion formula using the Treasury Department's formulas.[9] The coupon rate used prior to auction would be an assumed one that would be calculated based on a par-weighted average yield, adjusted down to the nearest ⅛th, derived using compared trade data from the most recent comparison cycle. The assumed coupon rate would be recalculated daily, and would be revised automatically if a movement of ⅛th of a point or more occurred, or otherwise as deemed appropriate by GSCC. Of course, on auction date, the price would be calculated based on the actual coupon.

The system price of a converted trade would be calculated pre-auction for the purpose of calculating a member's forward mark allocation requirement, based on the pre-weighted average of all compared trades in each CUSIP, the assumed coupon and accrued interest (if applicable).

The calculation of the conversion price would take into account commission. Yield trades should be submitted with commission data; however, GSCC understands that certain firms may initially not be able to do so. In general, in order to avoid generating compared trades as the result of either a lack of submission of a commission amount or a mistake in the submission of commission amount, if the data submitted on a yield basis involving a trade submitted by a broker member and a dealer member meet all of the criteria for comparison other than the information submitted regarding commission, and the dealer has submitted a commission amount that does not match the commission amount submitted by the broker, the trade would be compared based on the commission amount submitted by the broker.

In order to facilitate the ability of members subsequently to adjust between themselves commission discrepancies, GSCC would provide members with both daily information on each compared trade with a commission difference and an automated mechanism for correcting commission amount mistakes.

The comparisons by GSCC of a yield trade involving unmatched commission amounts, while evidencing a valid, binding and enforceable contract between the parties to the trade to the same degree as if the commission amounts matched, would not constitute a final, binding determination on those firms as to the correct commission amount. Broker members would have an ongoing obligation to their dealer member counterparties to respond promptly to such dealers' commission difference inquiries and to act in good

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issuance price has been set. GSCC member purchases and sales of securities prior to the auction date (commonly known and "when, as, and if, issued trades" or "when issued trades") which have been successfully compared typically are scheduled for settlement on a later date ("forward settling trades"). (The term "forward trades" encompasses "when-issued trades"). When-issued trading extends from the day the auction is announced until the issue day of the Treasury security traded Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19839 (approving GSCC's comparison service for forward settling trades); and 27902 (April 12, 1990), 55 FR 15055 (extending GSCC's netting system to the settlement of forward settling trades that have been successfully compared on a final price basis).

[4] The "assumed coupon" is an approximation of the actual coupon calculated using data (*i.e.*, type of security, CUSIP and time to maturity) that is common between existing securities and the securities to be issued.

[5] For a discussion of the calculation of the required clearing fund deposit, see Securities Exchange Act Release No. 29701 (April 12, 1990), 55 FR 15055.

[6] The forward mark allocation amount is the amount owed to GSCC based on the securities that GSCC anticipates that a netting member will be obligated, on the scheduled settlement date for the position, to either receive from GSCC or delivery to GSCC. See Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066 for a detailed description of the calculation of the forward mark allocation.

[7] Matched trades between participating and non-participating members, however, will not be included in the net.

[8] GSCC's Rules require registered brokers or dealers to maintain net worth of $50 million and excess net capital of $10 million; Government securities brokers or Government securities dealers are required to maintain $50 million net worth and $10 million excess liquid capital; inter-dealer brokers are required to maintain liquid capital or net capital of at least $4.2 million; and banks are required to maintain minimum equity capital of $250 million. See GSCC Rules and Procedures, R. 15.

[9] See Securities Exchange Act Release No. 29732 (September 24, 1991) 56 FR 49937 for a detailed description of the conversion formula.

faith to resolve all alleged differences. Members' comparison output would contain appropriate indication that a trade has been converted from yield to price status.

(b) The proposed rule change would make available to netting members the protection and efficiencies provided by netting as soon as possible after the trading in eligible securities commences. Thus, the proposal is consistent with the requirements of the Act and in particular section 17A and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not perceive that the proposed rule change impacts on, or imposes a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Notice of the proposed rule change has been published in the **Federal Register** in connection with an essentially identical proposed rule change which the Commission approved on a temporary basis.[10] GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

GSCC requests that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing.[11] GSCC requests accelerated approval to allow GSCC to implement the proposal as soon as possible after making the necessary system changes.

Consistent with the Commission's findings in the initial approval order,[12] the Commission believes that GSCC's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, the requirements of sections 17A(b)(3) (A) and (F).[13] Those sections require that a clearing agency be organized, have the capacity to facilitate, and have rules designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the procedures embodied in GSCC's proposal meet these statutory requirements by allowing GSCC to net, as soon as the night after the trade occurs, yield-based trades submitted to GSCC for comparison and netting.

The Commission believes that good cause exists for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. The Commission is extending the temporary approval period of the proposal for one year. Accelerated approval would permit GSCC to implement the conversion of yield-based trades as soon as possible, and without interruption, after the initial temporary approval period expires. Temporary approval of the proposal would permit GSCC, its members, and the Commission to determine whether the conversion service meets the expectations of GSCC and its members, and, if not, whether modifications are appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section at the address above. Copies of such filing will also be available for inspection and copying at the principle office of GSCC. All submissions should refer to File No. SR-GSCC-91-05 and should be submitted by February 5, 1992.

V. Conclusion

On the basis of the foregoing, the Commission preliminarily finds that GSCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act, and the Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposal (File No. SR-GSCC-91-05) be, and hereby is, approved on an accelerated basis until January 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1036 Filed 1-14-92; 8:45 am]

BILLING CODE 8010-01-M

[10] Securities Exchange Act Release No. 29732 (September 24, 1991), 56 FR 49937.

[11] Letter from Jeffrey Ingber, Associate General Counsel and Assistant Secretary, GSCC, to Sonia Burnett, Attorney, Division of Market Regulation, Commission (December 6, 1991).

[12] Securities Exchange Act Release No. 29732 (September 24, 1991), 56 FR 49937.

[13] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[Release No 34-30169; File No. SR-OCC-91-06]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Assessment of Applications for Clearing Membership and for Business Expansion

January 8, 1992.

On March 29, 1991, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-OCC-91-06) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") concerning membership qualifications and business expansions by members.[1] Notice of the proposed rule change was published in the **Federal Register** on May 13, 1991.[2] No comments were received. This order approves the proposal.

I. Description

OCC's proposed rule change would allow OCC to accomplish two distinct purposes. First, the proposal would establish objective criteria for assessing an applicant clearing member's competency and experience and for ensuring the continuing competency of existing clearing members in clearing securities transactions.[3] Second, the

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 28162 (May 3, 1991), 56 FR 22031.

[3] Article V, section 1 of OCC's By-laws requires, among other things, that in order for an applicant to become a clearing member of OCC the applicant must maintain facilities and personnel adequate for the expeditious and orderly transaction of business with OCC and with other clearing members and must meet other standards of experience and competency as prescribed in OCC's rules. In addition, Interpretations and Policies ("I and P") .03c to Article V, section 1 of OCC's By-laws provides that the Membership and Margin Committee ("MMC") will not recommend the approval of an application for clearing membership if the applicant lacks substantial experience in clearing securities transactions and has failed, in

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proposal would establish procedures for OCC to process applications for business expansion on an expedited basis.

A. Criteria for Assessing Competency and Experience

The proposed rule change would establish, in addition to the present subjective standards, objective competency and experience requirements for securities firms applying for clearing membership with OCC. Currently, the competency and experience of and applicant is assessed on a subjective basis by OCC staff in its routine operations orientation.[4]

Under the proposed rule change, a U.S. registered broker-dealer applicant or a person associated with such a broker-dealer applicant would be required to be registered as a Limited Principal—Financial and Operations ("FINOP") [5] with the National Association of Securities Dealers, Inc. ("NASD"). In order to be so registered, an individual must complete successfully the NASD FINOP examination. The FINOP examination is designed to provide an objective measure to competency in, among other things, clearing securities transactions.

OCC proposes to establish similar requirements for a "non-U.S. securities firm" [6] that is applying for clearing membership as an exempt Canadian clearing member.[7] As a condition of such clearing membership, OCC would require that the Canadian applicant or a person associated with the applicant be both a Principal/Director/Officer ("PDO") and a Designated Registered Options Principal ("DROP") with IDAC. In order to be so registered, the applicant will be required to successfully complete the competency examinations administered by IDAC thereby demonstrating the applicant's knowledge of applicable Canadian capital requirements and options transactions.[8]

In the case of other non-U.S. applicants,[9] OCC would require the applicant or a person associated with the applicant to take and successfully complete any applicable OCC financial and operations examination for employees who are responsible for supervising the preparation of the applicant's financial reports.[10]

Consistent with OCC's current procedures, the MMC may exempt an applicant from the above requirements if the applicant has entered into a facilities management agreement.[11] In addition, upon a written request and for good cause, the rule proposal would allow the MMC to waive the above requirements and accept other evidence of the applicant's experience in clearing securities transactions.

The proposal also would help to ensure the continued competency of existing clearing members in clearing securities transactions by requiring existing clearing members to meet similar financial and operations personnel requirements.[12] To facilitate member compliance, existing members would have until June 30, 1993, to comply with the new requirements. Thereafter, if a clearing member's noncompliance results from the separation of the financial and operations person from the clearing member, OCC would allow the clearing member one year from the date of separation to comply with the rule. In the event a clearing member has not complied with the rule by the end of the above specified periods, the MMC would have discretion either to require the clearing member to make additional clearing fund and margin deposits in an amount determined by the MMC or to require the clearing member to execute a facilities management agreement that would remain in effect until the clearing member complies with the requirements of the rule.

B. Applications for Business Expansion

OCC permits existing clearing members to apply for authorization to clear types of options transactions (*e.g.*, customer, firm, and market-maker transactions) and kinds of options transactions (*e.g.*, stock options, Treasury security options, and cross-rate options) in addition to the types and kinds of options transactions that the clearing member has been approved to clear.[13] Such applications for business expansion currently are submitted to the MMC for action. Because the MCC does not meet on a monthly basis, up to eight weeks can pass before action is taken on an application for business expansion. To improve the timeliness of its response to such applications, the rule proposal would authorize OCC's Chairman or President to approve on a temporary basis any application for business expansion for which a clearing

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the MMC's opinion, to employ back office personnel with sufficient experience to compensate for the applicant's lack of background in clearing.

[4] As a part of its applications process, OCC requires each prospective member to submit the resume of each of the prospective member's operations personnel. After the prospective member's application is received and reviewed, OCC Regulation Department conducts an interview and an operations orientation with the prospective clearing member. The purpose of the interview and orientation is to ensure that the prospective clearing member understands OCC By-laws and Rules and the procedures for exercise, assignment, and premium and margin settlement. Based on, among other things, the results of the interview and orientation and the prospective member's experience in clearing securities transactions, the Regulation Department reports its findings and recommendations to the MMC which then makes a subjective determination of whether or not to grant the applicant OCC membership. Telephone conversation between Jean Cawley, Staff Counsel, OCC, and Sonia Burnett, Attorney, Division of Market Regulation ("Division"), Commission (June 4, 1991).

[5] An individual registered as a FINOP may supervise preparation and filing of a broker-dealer's financial reports and may provide overall supervision of back office operations.

[6] Article 1, section 1 (rrr) of OCC By-Laws.

[7] OCC's By-Laws and Rules permit non-U.S. securities firms to apply for clearing membership in OCC. Canadian securities firms may apply to become exempt non-U.S. clearing members. (A "Canadian securities firm" is a securities firm that is formed and operated under the laws of Canada or any of its provinces, and that has its principal place of business in Canada.) OCC By-Laws, Article 1, section 1 (rrr). As exempt non-U.S. members, these clearing members may file financial reports with OCC under the financial and reporting standards of Canada and use the reporting forms established by the Investment Dealers Association of Canada ("IDAC"). OCC Rule 310(b). IDAC is the Canadian self-regulatory, organization that oversees the registration of persons actively engaged in the securities business in Canada.

[8] In a prior order, the Commission found that OCC's financial responsibility standards and the financial responsibility standards of the Canadian government were "sufficiently equivalent" to allow Canadian securities firms to become exempt non-U.S. clearing members. Securities Exchange Act Release No. 24725 (July 21, 1987), 52 FR 28400.

[9] Non-U.S. securities firms that are not eligible for exempt status must prepare their financial reports in accordance with U.S. accounting practices and with the Commission's accounting and financial reporting requirements. OCC Rule 310(a).

[10] Proposed new paragraph to OCC By-Laws, Article V, section 1, I and P.03a3. Amendment No. 1 to File No. SR–OCC–91–06.

[11] A "facilities management agreement" is a written agreement between an OCC clearing member ("the managing clearing member") and the applicant clearing member ("the managed clearing member") that sets forth the respective rights and obligations of the parties to the agreement. Pursuant to such an agreement, the managing clearing member agrees to perform certain of the applicant's obligations as a clearing member for transacting business with OCC and with other clearing members and for maintaining required books and records. The facilities management agreement generally provides that the managing clearing member would, among other things, provide back office processing for the managed clearing member. Facilities management agreements are subject to OCC approval. Furthermore, before membership is granted to an applicant using a facilities management agreement to fulfill part of its membership requirements, the applicant clearing member is required to demonstrate that it has the operational capability, experience, and competence to perform the duties and obligations which are not required to be performed by the managing clearing member. OCC By-laws, Article V, section 1, I and P .04.

[12] OCC proposed Rule 214 and I and P thereto.

[13] OCC By-laws, Article V, section 1, I and P .03e.

member has requested expedited treatment. [14]

Consistent with current procedures, the rule proposed would require the MMC to review independently the application at its next scheduled meeting and to determine *de novo* whether to approve or disapprove the application. The proposed rule change provides that if the MMC determines to modify or reverse the Chairman's or President's determination, the modification or reversal will operate prospectively and will not invalidate any action taken by OCC prior to the modification or reversal and will not operate to affect the rights of any person arising from the Chairman's or President's determination.

II. Discussion

As discussed below, the Commission believes that OCC's proposed rule change is consistent with the Act and in particular with the standards enumerated in sections 17A(b)(3)(A) and 17A(b)(3)(F).[15] Those sections require that a clearing agency is organized and that its rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

Further, the Commission believes that OCC's proposed rule change is consistent with section 17A(b)(3)(B).[16] That section allows a registered clearing agency to deny participation to or condition the participation of any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. Section 17A(b)(4)(B) also allows a registered clearing agency to examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

Section 17A was adopted in response to the "paperwork crisis" of the late 1960s which resulted from, among other things, increased trading volumes coupled with inefficient, duplicitous, and manual broker-to-broker clearance and settlement processes and with the use of untrained personnel.[17] The paperwork crisis caused the failure of many broker dealers. In addition, it highlighted the interdependence of the various market mechanisms and the importance of clearance and settlement to investor protection and a liquid secondary market. Thus, the effective control of securities processing is vital to the smooth functioning of the marketplace as a whole, and the adoption of section 17A was a significant step toward achieving that control.

Since that time, the Commission has encouraged the use of systems and procedures that would carry out the objectives of section 17A. The Commission believes that the NASD's FINOP registration program, IDAC's PDO and DROP registration program, and OCC's orientation and internal examination programs are designed to provide a reliable basis for evaluating a prospective member's experience and competency. Because these programs are used as the standard indicators of the competency of financial and operations personnel within the securities industry, successful completion will provide OCC greater assurance that its clearing membership has the necessary level of training and experience. Moreover, OCC's proposal would add objective criteria to OCC's membership review process and will enhance OCC's ability to ensure that its members have the competency and experience needed to provide prompt and accurate clearance and settlement of securities transactions and to provide for the safeguarding of securities and funds.

OCC's proposal to allow its President or Chairman to approve temporarily a clearing member's application for business expansion will provide greater flexibility in the administration of OCC's affairs. This aspect of the proposal will permit OCC to respond to clearing member business expansion requests in a timely manner consistent with clearing member business requirements and OCC's ability to complete the application review process. Nevertheless, the Commission is concerned that OCC not use the authority granted under the proposal inappropriately or in a manner that circumvents the responsibilities of the MMC. Accordingly, OCC has represented to the Commission staff that: (1) The MMC will be furnished with the same memorandum as was furnished to the Chairman and the President concerning any application for business expansion for which expedited treatment was requested and (2) the MMC usually follows OCC staff recommendations with respect to applications for business expansion. In addition, one year following approval of the proposed rule change, OCC will provide a report concerning any requests for expedited treatment of applications for business expansion.[18]

III. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that OCC's proposed rule change (File No. SR–OCC–91–06) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–983 Filed 1–14–92; 8:45 am]

BILLING CODE 8010–01–M

(Release No. 34–30152; File No. SR–PSE–91–46)

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Time To Submit an Exercise Advice Form for Index Options

January 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1991, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule 7.15 to extend the time in which exercise advice forms for index options may be submitted to the Exchange from 1:15 pm to 1:20 pm Pacific time ("PT").

The text of the proposed rule change is available at the Compliance Department of the PSE and at the Commission.

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[14] Proposed new paragraph to OCC By-laws, Article V, section 1, I and P .03e.

[15] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[16] 15 U.S.C. 78q–1(b)(3)(B).

[17] Division, Commission, "Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems" (June 14, 1985).

[18] Letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (October 21, 1991).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange believes that extending the deadline for submitting an exercise advice form for index options to the Exchange will provide market participants with the ability to make investment decisions based upon the evaluation of their final positions after having completed trading for the day. Under the proposal, customers will be given additional time to evaluate the closing prices of the stocks that are used to calculate the indexes. Market professionals will be allowed time to receive information from other markets as to whether certain orders, such as orders intended to hedge their options positions, were executed on those markets. If their hedging orders in other markets were not executed, the market participants will still be able to exercise their options positions and not remain in an unhedged position overnight. Additionally, the extension will allow professional traders to continue to provide quality markets until the close because they will not have to worry about submitting exercise advices prior to the actual close of the market. The extension will also structure the Exchange's rule to coincide with that of the Chicago Board Options Exchange ("CBOE"), which allows its market participants an additional five minutes to submit exercise advice forms after 3:15 p.m. Central time ("CT").[1]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

[1] See Securities Exchange Act Release No. 29860 (October 25, 1991), 56 FR 56254 (November 1, 1991) (order approving SR-CBOE-91-28).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[2] Specifically, the Commission believes that the proposal will give market participants the ability to make investment decisions based upon the evaluation of their final positions after having completed trading for the day.

The Commission also believes the proposal will benefit the market in general by fostering higher quality markets at the close of the trading day. First, market makers will not have to worry about submitting exercise advice forms prior to the actual close of the market and, therefore, can more fully concentrate on providing a quality market at the close. Second, market participants will be able to determine whether or not their orders on other related markets (*i.e.*, the futures markets) were executed, such as orders intended to hedge their options positions. If their hedging transactions in other markets are not executed by 1:15 p.m. (pt), then market participants, under the PSE's proposal, will still be able to exercise their options positions and not remain in an unhedged position overnight. Third, the proposal will give market participants additional time to evaluate the closing prices of the stocks that are used to calculate the indexes and determine whether or not to exercise their positions. Finally, the proposal will structure the Exchange's rules to coincide with those of the CBOE and the Chicago Mercantile Exchange ("CME").[3] As a result, the Commission believes extending the PSE's exercise notice cut-off time for index options will make the Exchange's index options markets more competitive with options markets on the CBOE and futures markets on the CME that are based on the same or similar index.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission finds that the PSE's proposal to extend the deadline for submitting exercise advice forms is identical to a CBOE proposal approved by the Commission on October 25, 1991 and raises no new issues.[4] The Commission notes that no comments were received on the CBOE proposal. The Commission believes that approving the PSE's proposed rule change on an accelerated basis will permit the PSE to compete with the CBOE on an equal basis for index options orders. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with resepct to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 5, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the

[2] 15 U.S.C. 78f(b)(5) (1988).

[3] See CME Rule 550. Under CME rules, market participants have an additional five minutes to settle trades after 3:15 p.m. (CT).

[4] See supra note 1.

[5] 15 U.S.C. 78s(b)(2) (1982).

proposed rule change (File No. SR-PSE-91-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-985 Filed 1-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30160; File No. SR-PSE-91-38]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Eligibility Criteria of Market Makers Participating in the Automatic Execution Feature of POETS

January 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend the criteria of market makers to be eligible to participate in the Automatic Execution ("Auto-Ex") feature of the Pacific Option Exchange Trading System. ("POETS").[1] The specific proposed standards are described in detail in section II below. The text of the proposing rule change is available at the Compliance Department of the PSE and at the Commission.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE proposes to amend the POETS Auto-Ex Eligibility criteria by refining the eligibility criteria to reflect the actual trading environment of the Exchange. Specifically, the proposed changes include:

1. Restricting a Market Maker's eligibility for Auto-Ex to one trading post that is part of his/her primary appointment zone;

2. Requiring participants on Auto-Ex to remain on the system for the duration of the trading day. Exemptions to log off the system shall only be granted in the presence of mitigating circumstances; and

3. Requiring a Market Maker who logs onto the system during Expiration week to remain on the system for the entire week.

In addition, under the proposed rule change, any Auto-Ex participant will be held liable for all trades executed through the system during his/her absence from the post or trading floor.

The Exchange believes that the above proposed amendments to the Auto-Ex policy will further the ability of the Exchange to provide the public with immediate executions by guaranteeing that there will always be a contraside to their orders. In addition, the Exchange believes that its proposal will serve to protect the public interest and investors. Accordingly, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trades, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange represents that the Options Floor Trading Committee endorses the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 5, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1037 Filed 1-14-92; 8:45 am]

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[1] The Commission approved the PSE's POETS system in January 1990. See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466.

[Rel. No. IC-18474; 812-7824]

Cash Management Fund, et al.; Notice of Application

January 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Cash Management Fund ("TBC Cash"), Managed Income Fund ("TBC Income"), Intermediate Term Government Securities Fund ("TBC Government"), Capital Appreciation Fund ("TBC Appreciation"), and Special Growth Fund ("TBC Growth"), each a series of the Boston Company Fund ("TBC Fund"); The Boston Company Tax-Free Money Fund ("TBC Tax-Free Money Fund ("TBC Tax-Free Money"), and The Boston Company Tax-Free Bond Fund ("TBC Tax-Free Bond"), each a series of The Boston Company Tax-Free Municipal Funds ("TBC Tax-Free Municipal Funds"); Short-Term Bond Fund ("TBC Short-Term") (formerly Cash Management Plus Fund) and International Fund ("TBC International"), each a series of The Boston Company Investment Series ("TBC Investment Series"); Money Market Fund ("AE Money"), Tax Free Money Market Fund ("AE Tax Free Money"), Tax Free Municipal Bond Fund ("AE Tax Free Bond"), Corporate Bond Fund ("AE Corporate Bond"), Intermediate Term Bond Fund ("AE ITBF"), U.S. Government Income Fund ("AE Government"), Equity Value Fund ("AE Value"), Equity Growth Fund ("AE Growth"), and International Equity Fund ("AE International"), each a series of The American Express Funds ("AE Funds"); and American Express Travel Related Services Company, Inc. ("TRS").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 17(b) from the provisions of section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit (a) TBC Cash to acquire all or substantially all the assets of AE Money in exchange for shares of TBC Cash; (b) TBC Income to acquire all or substantially all the assets of AE Corporate Bond in exchange for shares of TBC Income; (c) TBC Government to acquire all or substantially all the assets of AE Government in exchange for shares of TBC Government; (d) TBC Appreciation to acquire all or substantially all the assets of AE Value in exchange for shares of TBC Appreciation; (e) TBC Growth to acquire all or substantially all the assets of AE Growth in exchange for shares of TBC Growth; (f) TBC Tax-Free Money to acquire all or substantially all the assets of AE Tax Free Money in exchange for shares of TBC Tax-Free Money; (g) TBC Tax-Free Bond to acquire all or substantially all the assets of AE Tax Free Bond in exchange for shares of TBC Tax-Free Bond; (h) TBC Short-Term to acquire all or substantially all the assets of AE ITBF in exchange for shares of TBC Short-Term; and (i) TBC International to acquire all or substantially all the assets of AE International in exchange for shares of TBC International.

FILING DATE: The application was filed on November 18, 1991 and amended on January 6, 1992. Applicant's counsel has stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 3, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Boston Place, Boston, Massachusetts 02108. Attention: Mary E. Moran, Esquire.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of TBC Cash, TBC Income, TBC Government, TBC Appreciation, and TBC Growth is one of six series of TBC Fund, a Massachusetts business trust registered under the Act as a diversified, open-end management investment company. Each of TBC Tax-Free Money and TBC Tax-Free Bond is one of eight series of TBC Tax-Free Municipal Bonds, a Massachusetts business trust registered under the Act as a non-diversified, open-end management investment company. Each of TBC Short-Term and TBC International is one of five series of TBC Investment Series, a diversified, open-end management investment company. (Each of the above is an "Acquiring Fund"). The Boston Company Advisors, Inc. ("Boston Advisors") serves as the investment adviser and TBC Funds Distributor, Inc. ("TBC Funds Distributor") serves as the distributor for each of the Acquiring Funds. PanAgora Asset Management, Inc. ("PanAgora") serves as the sub-investment adviser for TBC International.

2. Each of AE Money, AE Tax Free Money, AE Tax Free Bond, AE Corporate Bond, AE ITBF, AE Government, AE Value, AE Growth and AE International (each an "Acquired Fund") is one of nine series of AE Funds, a Massachusetts business trust registered under the Act as a diversified, open-end management investment company. Shearson Lehman Advisors serves as the investment adviser to each of AE Money and AE Tax Free Money. IDS Financial Corporation ("IDS Financial") serves as the investment adviser to each of the other Acquired Funds. IDS International, Inc. ("IDS International") serves as the sub-investment adviser to AE International. American Express Service Corporation ("AESC") serves as the investment manager of AE Funds, with general oversight responsibility for the day-to-day management of AE Funds, and as distributor for each of the Acquired Funds.

3. The investment objective of both AE Money and TBC Cash is to seek a high rate of current income, safety of principal, and daily liquidity by investing in a diversified portfolio of money market instruments.

4. The investment objective of both AE Tax Free Money and TBC Tax-Free Money is to seek maximum current income exempt from Federal income taxes to the extent consistent with the preservation of capital and the maintenance of liquidity.

5. AE Corporate Bond seeks to provide a high level of current income consistent with the protection of capital by investing, under normal circumstances, at least 65% of its total assets in corporate bonds of U.S. issuers rated investment grade by Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Corporation ("S&P") or, if not rated, are deemed to be of comparable quality by the fund's

advisers, and generally having maturities of 10 years or more from date of purchase. TBC Income seeks to provide high current income consistent with what is believed to be prudent risk of capital. Under normal market conditions, TBC Income invests 65% of its total assets in U.S. Government securities and in investment-grade obligations with the four highest ratings of Moody's or S&P or in unrated obligations of comparable quality having maturities of 10 years or less.

6. Both AE ITBF and TBC Short-Term seek to obtain a high level of current income consistent with the preservation of capital. AE ITBF invests substantially all, and at least 65%, of its assets in corporate bonds of U.S. issuers rated investment grade by Moody's or S&P, or if not rated, believed to be of comparable quality by AE ITBF's investment adviser and in securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities ("U.S. Government Securities"), including government stripped mortgage-backed securities. The portion of assets not so invested may be invested in short-term U.S. Government and corporate obligations, convertible securities and preferred stock that is not convertible into common stock, which in any case may not be rated lower than B by Moody's or S&P. TBC Short-Term invests primarily in investment-grade fixed-income securities having remaining maturities of five years or less, or unrated securities of equivalent quality in the opinion of TBC Short-Term's investment adviser. TBC Short-Term may invest up to 20% of its assets in high risk, lower-quality securities, to the extent that such securities are consistent with its investment objective. Such securities may include bonds rated as low as C by Moody's or S&P.

7. AE Tax Free Bond seeks to provide investors with high current income exempt from Federal income taxes. TBC Tax-Free Bond seeks to maximize current income exempt from Federal income taxes to the extent consistent with the prudent risk of capital. Both may, for temporary defensive purposes, invest in taxable high quality, short-term municipal obligations without limit.

8. AE Government and TBC Government both seek high current income consistent with the preservation of capital by, under normal circumstances, investing in U.S. Government Securities. AE Government invests at least 85% of its total assets in U.S. Government Securities, including mortgage-backed securities issued by the Government National Mortgage Association ("GNMA"), mortgage-backed securities issued by the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Federal National Mortgage Association ("FNMA"). AE Government may invest up to 15% of its total assets in mortgage-backed securities issued by private issuers so long as such securities are rated "A" or better by Moody's or S&P or, if unrated, are believed to be of comparable investment quality within these ratings. TBC Government invests at least 65% of its assets in U.S. Government Securities with remaining maturities of between three to eight years, and may invest up to 35% of its assets in mortgage-backed securities issued by GNMA, FHLMC, and FNMA. TBC Government may not invest in securities of private issuers.

9. The investment objective of AE Growth is to seek capital appreciation. The investment objective of TBC Growth is to seek above-average growth of capital through securities selected solely on the basis of potential for capital appreciation.

10. AE Value seeks capital appreciation and income by investing, under normal market conditions, at least 65% of its total assets in equity securities consisting of common stocks and convertible securities that its investment adviser believes are undervalued. TBC Appreciation seeks long-term growth of capital through investment principally in U.S. companies with current income as a secondary objective.

11. AE International seeks capital appreciation by investing, under normal circumstances, at least 65% of its total assets in equity securities consisting of common stocks and convertible securities of non-U.S. issuers believed by the investment adviser to have a potential for superior growth in sales and earnings. TBC International seeks long-term growth in capital through investments in companies located outside of the U.S. Current income from dividends, interest, and other sources is a secondary objective.

12. Each Acquiring Fund proposes to acquire all or substantially all of the assets of its corresponding Acquired Fund in exchange for its shares. Following is a summary of the proposed transactions: (a) TBC Cash proposes to acquire all or substantially all the assets of AE Money in exchange for shares of TBC Cash; (b) TBC Income proposed to acquire all or substantially all the assets of AE Corporate Bond in exchange for shares of TBC Income; (c) TBC Government proposes to acquire all or substantially all the assets of AE Government in exchange for shares of TBC Government; (d) TBC Appreciation proposes to acquire all or substantially all the assets of AE Value in exchange for shares of TBC Appreciation; (e) TBC Growth proposes to acquire all or substantially all the assets of AE Growth in exchange for shares of TBC Growth; (f) TBC Tax-Free Money proposes to acquire all or substantially all the assets of AE Tax Free Money in exchange for shares of TBC Tax-Free Money; (g) TBC Tax-Free Bond proposes to acquire all or substantially all the assets of AE Tax Free Bond in exchange for shares of TBC Tax-Free Bond; (h) TBC Short-Term proposes to acquire all or substantially all the assets of AE ITBF in exchange for shares of TBC Short-Term; and (i) TBC International proposes to acquire all or substantially all the assets of AE International in exchange for shares of TBC International. Each of these transactions ("Reorganization" or "Reorganizations") is a separate transaction that is unaffected by whether any other Reorganization is consummated.

13. Each Acquiring Fund will assume all liabilities, expenses, costs, charges, and reserves or obligations of the corresponding Acquired Fund as of the close of regular trading on the New York Stock Exchange on the closing date (the "Closing Date"), which currently is expected to be February 10, 1992. The number of full and fractional shares of each of the Acquiring Funds to be issued to shareholders of the Acquired Funds will be determined on the basis of relative net asset values per share and the aggregate net assets of the Acquiring Funds computed as of 4:00 p.m. (eastern time) on the Closing Date. As conveniently as practicable after the Closing Date, each Acquired Fund will liquidate and distribute *pro rata* to its shareholders of record as of 4 p.m. (eastern time) on the Closing Date the shares of the Acquiring Fund received by the Acquired Fund in the Reorganization. Such liquidation and distribution will be accomplished by the establishment of accounts on the share records of the Acquiring Fund in the name of each Acquired Fund shareholder, each account representing the respective *pro rata* number of shares of the Acquiring Fund due the shareholder.

14. At or prior to the Closing Date, each of the Acquired Funds shall have declared a divided or dividends which shall have the effect of distributing to the shareholders of each Acquired Fund all of the fund's investment company taxable income for the taxable year ending on or prior to the Closing Date (computed without regard to any

deduction for dividends paid) and all of its net capital gain realized in the taxable year ending on or prior to the Closing Date (after reduction for any capital loss carry-forward).

15. The board of trustees of TBC Fund, TBC Tax-Free Municipal Funds, TBC Investment Series and AE Funds (the "Companies"), including the trustees who are not "interested persons" as such term is defined by the Act (the "Independent Trustees") have reviewed a form of the plans of reorganization, including the consideration to be paid or received.

16. In determining whether to recommend approval of the Reorganizations to shareholders of the Acquired Funds and in approving the terms of the proposed Reorganizations, the trustees of the Companies, including the Independent Trustees, considered the following factors, among others: (a) The capabilities and resources of each Acquiring Fund's investment adviser, principal underwriter, sub-investment advisers (if applicable), and administrator and transfer agent in the area of marketing, investment and shareholder servicing; (b) expense ratios and published information regarding the fees and expenses of the constituent and similar funds; (c) the comparative investment performance of each Acquired and Acquiring Fund, as well as the performance of similar funds; (d) the terms and conditions of the Reorganizations and whether the Reorganizations would result in dilution of shareholder interests; (e) the compatibility of the funds' investment objectives, policies, and restrictions, as well as service features; (f) the absence of any costs incurred by the funds as result of the Reorganizations; and (g) the tax consequences of the Reorganizations.

17. The proposed Reorganizations are subject to approval by the holders of a majority (as defined in the Act) of the outstanding shares of each Acquired Fund, voting separately by series. Approval will be solicited pursuant to a prospectus/proxy statement [1] which includes a description of the material aspects of the proposed Reorganizations, information about the Acquiring Funds, a comparison of the Acquiring and Acquired Funds involved in the Reorganization, and pertinent financial information. The proposed Reorganizations will not affect the rights of shareholders of the Acquiring Funds.

[1] A definitive prospectus/proxy statement with respect to each Reorganization has filed with the Commission on December 26, 1991. Nos. 33-43846; 33-43845; and 33-43847.

18. The expenses of each Reorganization will be borne by TRS, AESC, and Boston Advisers.

19. None of the Acquired Funds or Acquiring Funds charges a contingent deferred sales load. The shareholders of each Acquired Fund will be entitled to redeem their shares at net asset value until the Closing Date of the respective Reorganization.

20. The consummation of each Reorganization is subject to certain conditions, including that the parties shall have received from the Commission the order requested herein, and the receipt of an opinion of tax counsel to the effect that upon consummation of each Reorganization and the transfer of substantially all the assets of each Acquired Fund, no gain or loss will be recognized by the Acquired or Acquiring Funds or their shareholders as a result of the Reorganization.

Applicants' Legal Analysis

1. American Express Company is primarily engaged, through its subsidiaries, in providing a variety of travel related services, investor diversified financial services, international banking services, information services, and investment services throughout the world. TRS is a wholly-owned subsidiary of the American Express Company. TRS offers mutual funds and other investment products through American Express Service Corporation ("AESC"), a wholly-owned subsidiary of TRS. Financial planning and investment management services are provided by IDS Financial and its subsidiaries. IDS Financial is a wholly-owned subsidiary of the American Express Company. Investment and asset management services are offered through (a) Shearson Lehman Brothers Inc. ("SL Brothers"), a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. ("SL Holdings"), (b) Shearson Lehman Advisors ("SL Advisors"), an unincorporated member of the Asset Management Group, which is a division of SL Brothers, and (c) The Boston Company, Inc. ("TBC") and its subsidiaries, including Boston Advisors and TBC Funds Distributor. TBC is a wholly-owned subsidiary of SL Brothers. All of the oustanding common stock (representing approximately 92% of the issued and outstanding voting stock) of SL Holdings is owned by the American Express Company. Information services are offered through American Express Information Services Corporation and its subsidiaries.

2. The Acquiring and Acquired Funds have investment advisers that may be deemed to be under "common control" within the meaning of section 2 (a)(9) of the Act because of the relationships described above. Thus, the Acquiring and Acquired Funds may be deemed "affiliated person" within the meaning of section 2 (a)(3)(C) of the Act. In addition, each of the Acquired Funds, except AE Money, is an "affiliated persons" of TRS within the meaning of section 2 (a)(3)(B) because TRS and its affiliates beneficially own five percent or more of the shares of each of the Acquired Funds except AE Money. Furthermore, each of the Acquired Funds, except AE Money, may be deemed to be controlled by TRS as a result of TRS's beneficial ownership of twenty-five percent or more of the outstanding voting securities of each Acquired Fund, except for AE Money. Because of these relationships, the proposed reorganizations would be prohibited by section 17(a) of the Act, which generally prohibits the sale of securities or property to a registered investment company by an affiliated person of an affiliated person of each company.

3. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. The proposed Reorganizations would be exempt from the provisions of section 17(a) pursuant to rule 17a-8 but for the fact that the Acquired Funds and the Acquiring Funds are affiliated by reasons other than a common investment adviser, common directors, and/or common officers. Nonetheless, applicants believe that the Reorganizations are consistent with the policies and purposes underlying rule 17a-8 insofar as the transactions would be in the best interests of the respective funds and that the interests of existing shareholders will not be diluted as a result of the transactions. These findings and the basis therefore will be recorded fully in the minute books of the respective board of trustees.

4. Applicants submit that the terms of the proposed Reorganizations are fair and reasonable and do not involve overreaching on the part of any person concerned and that the proposed Reorganizations are consistent with the policies of the respective funds recited in their respective registration statements and reports filed under the Act and with the general purposes of the Act. Applicants note that participation

in funds managed by Boston Advisors through the proposed Reorganizations of the Acquired Funds will provide shareholders of the Acquired Funds a more extensive choice of portfolio investment objectives. Additionally, the larger aggregate net assets of the combined funds should enable the funds to obtain economies of scale that will benefit shareholders.

Applicants' Condition

Applicants have agreed that the requested order may be issued subject to the following condition:

Each of the boards of trustees of TBC Fund, TBC Tax-Free Municipal Funds, TBC Investment Series, and AE Funds, including the trustee who are not "interested persons" of such trusts (as such term is defined in the Act), shall have concluded that the Reorganizations are in the best interests of the shareholders of the respective funds and will not result in the dilution of the interests of any of the existing shareholders of the funds. Such findings, and the basis upon which the findings were made, shall be recorded fully in the minute book of such trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 92-984 Filed 1-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18473; File No. 812-7818]

Merrill Lynch Life Insurance Co., et al.

January 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Merrill Lynch Life Insurance Company ("Merrill Lynch Life"), Merrill Lynch Life Variable Annuity Separate Account A and Merrill Lynch Life Variable Annuity Separate Account B (together, the "Merrill Accounts"), ML Life Insurance Company of New York ("ML of New York"), ML of New York Variable Annuity Separate Account A and ML of New York Variable Annuity Separate Account B (together, the "ML of New York Accounts") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2), 27(a)(3) and 27(c)(2) of the 1940 Act and Rule 27a-2 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Merrill Accounts and ML of New York Accounts and the deduction of contingent deferred sales charges in connection with certain withdrawals and surrenders from the assets of Merrill Lynch Variable Annuity Separate Account A and ML of New York Variable Annuity Separate Account A when no sales charge is imposed upon amounts paid into Merrill Lynch Variable Annuity Separate Account B and ML of New York Variable Annuity Separate Account B.

FILING DATE: November 4, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 3, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Merrill Lynch Life Insurance Company, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Attorney, at (202) 272-2058, or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Merrill Lynch Life is a stock life insurance company organized under the laws of the State of Washington in 1985 and redomesticated under the laws of the State of Arkansas in 1991. Merrill Lynch Life is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., a diversified financial services holding company organized in 1973. Merrill Lynch Life is the depositor of each of the Merrill Lynch Accounts.

2. ML of New York is a stock life insurance company organized under the laws of the State of New York in 1973. Effective September 11, 1991, the corporate name of ML of New York was changed from Royal Tandem Life Insurance Company to ML Life Insurance Company of New York. ML of New York is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. ML of New York is the depositor of each ML of New York Account.

3. The Contracts to be issued by ML of New York are identical in all relevant respects to the Contracts to be issued by Merrill Lynch Life. ML of New York Variable Annuity Separate Account A is identical in all relevant respects to Merrill Lynch Life Variable Annuity Separate Account A (each referred to as "Account A"). ML of New York Variable Annuity Separate Account B is identical in all relevant respects to Merrill Lynch Life Variable Annuity Separate Account B (each referred to as "Account B") (Merrill Lynch Life and ML of New York each are referred to as the "Company").

4. Each Account has been established as a distinct separate investment account of the Company, for the purpose of funding the Contracts to be issued by the Company. The Merrill Lynch Accounts and the ML of New York Accounts are being registered under the 1940 Act as unit investment trusts. Each of the Accounts constitutes a "separate account" as defined in section 2(a)(37) of the 1940 Act and Rule 0-1(e) thereunder.

5. The Contracts are individual deferred variable annuity contracts designed for use in connection with non-qualified plans as well as Merrill Lynch custodial individual retirement accounts and individual retirement annuities and IRA rollover accounts. The Contracts provide for the accumulation of values on a variable basis and the payment of annuity benefits on a fixed basis.

6. The Contracts are designed to act as a comprehensive and flexible annuity investment vehicle, employing both Account A and Account B as part of a single annuity contract. Account A is designed to be a core investment vehicle that will accommodate a contract owner's long-term investment goals while Account B is designed to accommodate a contract owner's desire to keep a portion of his or her contract value relatively accessible for withdrawals.

7. Assets of Account A and Account B will be invested in shares of Merrill Lynch Variable Series Funds, Inc. (the "Series Fund"), a Maryland corporation registered under the 1940 Act as a diversified open-end management

investment company. Account A initially is subdivided into subaccounts, each of which invests exclusively in a corresponding class of Series Fund shares. However, assets of Account A are not invested in shares of the Reserve Assets portfolio of the Series Fund. Assets of Account B are invested in shares of only one class of the Series Fund, the Reserve Assets portfolio.

8. MLPF&S is a wholly-owned subsidiary of Merrill Lynch & Co., Inc. and the principal underwriter of the Contracts. MLPF&S is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

9. The minimum initial premium is $5,000 for a non-qualified Contract and $2,000 for an IRA Contract. The minimum payment for subsequent premiums is $300. Account A value may be transferred among subcontracts of Account A up to six times each contract year without charge. Additional transfers may be made at a charge of $25 per transfer. Transfers within Account B are not possible because Account B offers only one investment option. Once each contract year, a contract owner may transfer from Account A to Account B all or part of the gain on premium in Account A and/or premiums that have been invested in Account A that are no longer subject to contingent deferred sales charges. Transfers from Account B to Account A are not permitted. Transfers will be made in reliance on Rule 11a–2 under the 1940 Act. The Contract offers an additional optional transfer feature called dollar cost averaging. This feature provides for automatic monthly transfers from the Account A Domestic Money Market Fund subaccount to any of the remaining Account A subaccounts specified by the contract owner.

10. Partial withdrawals may be made from the Contract up to six times each contract year. The minimum amount that may be withdrawn is $300. If less then $2,000 would remain in the Contract after a withdrawal is made, the withdrawal will not be permitted. A contingent deferred sales charge will apply to any portion of the withdrawal deemed to be a premium paid into Account A within the immediately preceding seven years. Withdrawals made from Account B will not be subject to any contingent deferred sales charges. A contract owner who is at least 59½ years old and who has a MLPF&S brokerage account may request monthly, quarterly, semi-annual or annual automatic withdrawals from Account B into any of the contract owner's MLPF&S brokerage accounts. Automatic withdrawals are not subject to any contingent deferred sales charges and are in addition to other withdrawals permitted under the Contract.

11. The Contract provides a death benefit payment when a contract owner dies prior to the annuity date. The death benefit equals the greater of (a) the sum of all premiums paid into Account A with interest compounded daily to yield 5% annually; less (i) any transfers to Account B and (ii) any withdrawals from Account A and any associated charges; plus the Account B value; or (b) the contract value. For purposes of this calculation, interest shall accrue only during the first twenty years.

12. A $40 contract maintenance charge is deducted from the contract value on each contract anniversary and on surrender of the Contract on any date other than a contract anniversary. The contract maintenance charge reimburses the Company for expenses related to maintenance of the Contracts, including issuing Contracts, maintaining records, and performing accounting, regulatory compliance, and reporting functions. This charge is waived on any contract anniversary or surrender if the contract value is then equal to or greater than $50,000. The contract maintenance charge is not deducted after the annuity date. Even though contract maintenance expenses may increase, the contract maintenance charge will never increase.

13. An administration charge of 0.10% annually will be deducted daily from the net asset value of Account A. The administration expenses covered by the charge include those costs associated with the establishment and administration of Account A, such as processing transfer requests and periodic dollar cost averaging transfers. The amount of the administration charge is guaranteed never to increase. A $25 charge is imposed for any transfer among Account A subaccounts made after the first six transfers in a contract year.

14. The aggregate amount of the contract maintenance, administration and transfer charges is not greater than the Company's average expected cost of the maintenance and administration services to be provided for the life of the Contracts. The contract maintenance, administration and transfer charges are designed only to reimburse the Company for its maintenance and administration expenses on a cumulative basis. Applicants intend to rely on Rules 26a–1 and 6c–8 under the 1940 Act for the necessary exemptive relief to permit imposition of the contract maintenance charge, the administration charge and the transfer charge.

15. A declining contingent deferred sales charge is assessed upon withdrawal or surrender from Account A of all or part of the withdrawn Account A value attributable to a premium paid into Account A within the preceding seven years. The amount of the charge depends upon the length of time the withdrawn premium has remained invested in Account A, in accordance with the following schedule:

No. of complete years elapsed since premium was paid into Account A	Contingent deferred sales charge (as percentage of premiums withdrawn)
0	7
1	6
2	5
3	4
4	3
5	2
6	1
7 and thereafter	0

Except in the case of the first withdrawal from Account A, withdrawals from Account A will be treated as consisting first of premiums paid into Account A on a "first-in, first-out" basis and then of any gain on premiums paid into Account A. For the first withdrawal in a contract year, the amount withdrawn will be treated as consisting first of gain, then of premium on a "first-in, first-out" basis. For this purpose, gain is the difference between (i) contract value in Account A for the valuation period in which the withdrawal request is received and (ii) premiums invested in Account A less any prior withdrawals of premium. No contingent deferred sales charge will be imposed on any payment made due to the death of the contract owner. Applicants intend to rely on Rule 6c–8(b) under the 1940 Act for the necessary exemptive relief to permit the imposition of the contingent deferred sales charge on withdrawals from Account A. No contingent deferred sales charge will be assessed upon withdrawals from Account B.

16. A mortality and expense risk charge equal to 1.25% annually for Account A and 0.65% annually for Account B is deducted daily from the net asset value of the Accounts. Of this amount, 0.75% annually for Account A and 0.35% annually for Account B can be allocated to the mortality risks assumed by the Company in connection with the annuity payment and death benefit guarantees made under the Contract. These guarantees include making annuity payments unaffected by

mortality experience and providing a minimum death benefit under the Contract. Of the total mortality and expense risk charge, 0.50% annually for Account A and 0.30% annually for Account B can be allocated to the expense risks assumed by the Company, specifically that the Company's contract maintenance charge and administration charge will be sufficient to cover all Contract maintenance and administration expenses. The mortality and expense risk charge is greater for Account A than for Account B because a greater death benefit and higher administrative expenses are attributable to Account A. If the mortality and expense risk charge is inadequate to cover the actual expenses of mortality, maintenance, and administration, the Company will bear the loss. If the charge exceeds the actual expenses, the excess will be added to the Company's profit. The mortality and expense risk charge for each Account will never increase.

17. Applicants represent that the mortality and expense risk charge for each Account is within the range of industry practice for comparable variable annuity contracts. This representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence of other charges, the nature of transfer, dollar cost averaging and automatic withdrawal privileges, provisions relating to annuitization and guaranteed death benefits, and the number and nature of annuity payment options. The Company will maintain at its principal executive offices, available to the SEC or its staff upon request, a memorandum setting forth in detail the variable annuity contracts analyzed in the course of, and the methodology and results of, the comparative survey made.

18. The lower mortality and expense risk charge for Account B takes into account that there is a more limited range of contract features and guarantees associated with Account B than with Account A. While a varied selection of portfolio options and transfer privileges are available in Account A, only a single portfolio option and no transfer privilege are available in Account B. Also, dollar cost averaging is available in Account A but not Account B. Additionally, the death benefit feature in effect guarantees that the death benefit based on Account A will equal the greater of the Account A value or the total amount of premiums paid into Account A with interest added at a rate compounded daily to yield 5% annually during the first twenty contract years, regardless of the investment experience of the Account A subaccounts. The Contract does not provide such a death benefit guarantee with respect to Account B. Accordingly, Account B's mortality and expenses risk charge is lower than Account A's because there is less risk with respect to Account B than with respect to Account A that the applicable charges deducted will be less than the expenses associated with the contract features and guarantees available through the respective Account.

19. If a profit is realized from the mortality and expense risk charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the collection of contingent deferred sales charges. In such circumstances, a portion of the mortality and expense risk charge for each Account might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company concludes that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit each of the Accounts and all contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Company at its administrative office and will be available to the SEC or its staff upon request. Moreover, the Company represents that each of the Accounts will invest only in underlying mutual funds which undertake, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

20. Applicants also request exemption from the "stair-step" requirements of section 27(a)(3) of the 1940 Act and Rule 27a–2 thereunder to the extent necessary to permit the imposition of a contingent deferred sales charge on premiums paid into Account A, when no sales charge is imposed on amounts paid into Account B under the Contract.

21. Section 27(a)(3) of the 1940 Act, as applied to variable annuity contracts, makes it unlawful for an issuer of such contracts or for any depositor or underwriter of such an issuer to sell any such contracts if "the amount of sales load deducted from any one of [the] first [12 monthly] payment exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment."

22. Rule 27a–2 exempts any registered separate account and any depositor or underwriter for such separate account, from section 27(a)(3) of the Act if, "with respect to any variable annuity contract participating in such account the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment during the contract period."

23. Because premiums paid into Account A may be subject to a sales charge on a subsequent withdrawal or surrender, while premiums paid into Account B are not, a contract owner could allocate all of one premium to Account B, which would not be subject to any sales charge, and then allocate all of a subsequent premium to Account A, which would be subject to the Contract's contingent sales charge if withdrawn in less than seven years after it was paid. Such a sequence of allocations could result in a higher sales load being assessed against the later payment. As a result, the Contract would not comply with the stair-step provisions of section 27(a)(3) or Rule 27a–2.

24. Applicants submit that the deduction of a contingent deferred sales load with respect to premiums paid into Account A, but not to premiums paid into Account B, does not implicate the policy concerns that underlie the stair-step provisions of section 27(a)(3) and Rule 27a–2. The legislative history of section 27(a)(3) and subsequent SEC interpretations of that section with respect to variable contracts,[1] as well as its promulgation of Rule 27a–2, indicate that the policy and intent of that section and Rule are to prevent excessive front-end sales loads on periodic payment plans that would cause an investor withdrawing or redeeming his investment in the early years of a plan to recoup little or none of his original investment. Applicants represent that the Contract's method for assessing sales load under the Contract complies with the policy underlying section 27(a)(3) and Rule 27a–2. No sales charges will be deducted from premiums at the time they are paid. Therefore, the traditional focus of the stair-step rule—early deductions of high front-end sales

[1] See United Investors Life Ins. Co. (pub. avail. Jul. 9, 1987); Western Reserve Life Ins. Co. (pub. avail. Aug. 28, 1987).

loads—does not exist under the Contracts. Even if initial premiums under a Contract were paid entirely into Account A, the resulting assessment of sales load does not result in a forfeiture of an excessive amount of those premium payments.

25. Applicants represent that the SEC has previously permitted sales loading practices in variable life insurance contracts that raise similar issues under the stair-step provisions of Rule 6e–2 and 6e–3(T) promulgated under the 1940 Act. For example, the SEC has granted exemptive relief from section 27(a)(3) to permit the imposition under a variable life insurance contract of a sales load arrangement that arguably violated the stair-step rules because lower sales loads were imposed on unscheduled premium payments than on scheduled premium payments made during the first contract year. The relief was granted in part based on the reasoning that the scheduled and unscheduled premium payments each served a different purpose for a contract owner, and therefore the sales load schedule should be analyzed separately for each type of payment, and in part based on the reasoning that it was not in the interest of investors to require a sales load on unscheduled premiums in excess of that deemed necessary by the issuer. Each of the Accounts likewise serves a different purpose for contract owners. Account B primarily serves an accessibility function, and Account A acts as a core investment repository. Further, the contingent deferred sales charge schedule applicable to Account A remains the same for each premium paid into Account A and never increases from one premium to the next. Premiums paid into Account B are never subject to a sales charge.

26. The difference in sales load between Account A and Account B corresponds to the difference in sales commission expenses associated with the Account. Sales commissions paid to persons selling the Contracts are higher for premiums paid into Account A than for premiums paid into Account B. Under these circumstances, it is appropriate that premiums paid into Account A be subject to sales charges even though premiums paid into Account B are not. Further, the Company could avoid the potential stair-step issue simply by imposing the contingent deferred sales charge equally on premiums paid into both Accounts. However, such an arrangement would be to the detriment of contract owners.

27. For the reasons and the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–981 Filed 1–13–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18475; 812–7743]

Quest for Value Fund, Inc., et al.; Application

January 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Quest for Value Fund, Inc., Quest for Value Family of Funds, Quest for Value Global Equity Fund, Inc., and Quest for Value Global Funds, Inc. (the "Companies"), Quest for Value Advisors (the "Adviser"), and Quest for Value Distributors (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 6(c) of the 1940 Act from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rules 22c–1 and 22d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to permit the Companies and any other open-end investment company which is or may become a member of the Quest "group of investment companies" with the same traditional front-end sales charge structure (collectively, the "Funds"): (1) To impose a contingent deferred sales charge ("CDSC") on certain share redemptions, (2) to waive the CDSC in certain instances and (3) to credit any CDSC paid in connection with a redemption of shares followed by a reinvestment within 90 days in the same or another Fund.

FILING DATES: The application was filed on June 21, 1991 and amendments were filed on September 26 and November 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 3, 1992, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Thomas F. Duggan, Esq., Quest for Value Advisors, One World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Companies are each registered under the 1940 Act as open-end diversified management investment companies. Quest for Value Fund, Inc., Quest for Value Global Equity Fund, Inc., and Quest for Value Global Funds, Inc., are Maryland corporations. Quest for Value Family of Funds is a Massachusetts business trust organized in series form. The Adviser provides investment advisory services to the Companies, and the Distributor acts as the Companies' principal underwriter.

2. The Companies currently offer their shares for sale at net asset value plus a front-end sales charge as described in the prospectuses for the Companies. The Distributor receives the sales charges and reallows all or a substantial part of them as commissions to broker-dealers that have Dealer Agreements with the Distributor and that effected the sales of the Company shares. Upon the grant of the requested exemption, Applicants propose to implement the contingent deferred sales charge arrangement described below.

3. Under the proposed CDSC arrangement, for sales of Fund shares of $1 million or more, except (as presently contemplated) three series of Quest for Value Family of Funds, no front-end sales charge will be imposed. If such shares are redeemed within 24 months after the end of the calendar month in which the purchase order was accepted, a contingent deferred sales charge will be imposed equal to 1% if the redemption occurs within the first

twelve months and equal to .5 of 1% if the redemption occurs in the next twelve months of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. The sales charge would be deducted from the redemption proceeds otherwise payable to the shareholder and would be retained buy the Distributor.

4. No contingent deferred sales load will be imposed when the shareholder redeems: (a) Shares representing amounts attributable to increases in the value of an account above the net cost of the investment due to increases in the net asset value per share; (b) shares required through reinvestment of income dividends or capital gain distributions; (c) shares acquired by exchange from a Fund (other than a money market fund) where the exchanged shares would not have been subject to a CDSC upon redemption; and (d) shares held for more than 24 months from the end of the calendar month in which the purchase order was accepted. In determining whether a contingent deferred sales charge is payable, it would be assumed that shares, or amounts representing shares, that are not subject to a contingent deferred sales charge are redeemed first and that other shares or amounts are then redeemed in the order purchased, consistent with the Applicants' undertaking below to comply with proposed Rule 6c–10 under the 1940 Act in the form proposed and as it may be reproposed or adopted. No CDSC would be imposed on exchanges to purchase shares of another Fund (although a CDSC will be imposed on shares of the acquired Fund purchased by exchange of shares subject to a CDSC if such acquired shares are redeemed within 24 months of the end of the calendar month in which the exchanged shares were purchased).

5. The CDSC arrangement will not apply with respect to sales for which the selling dealer is not permitted to receive a sales load or redemption fee imposed on a shareholder with whom such dealer has a fiduciary relationship, in accordance with provisions of the Employee Retirement Income Security Act and regulations thereunder. The contingent deferred sales charge also may be waived in the following instances:

(a) Redemptions in connection with (i) distributions to participants or beneficiaries of plans qualified under the Internal Revenue Code as amended from time to time ("IRC") Section 401(a , custodial accounts under IRC Section 403(b)(7), individual retirement accounts under IRC section 408(a), deferred compensation plans under IRC section 457 and other employee benefit plans (collectively, "plans"), (ii) changes in investment choices in these plans among the Funds, and (iii) returns of excess contributions made to these plans; and

(b) Redemptions effected pursuant to the Funds' right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the then effective minimum account size.

6. A shareholder would be credited with any contingent deferred sales charge paid in connection with the redemption of any shares followed by a reinvestment in the same or another Fund within 90 days after such redemption. The credit would be paid by the Distributor into the shareholder's account.

7. The CDSC arrangement will apply only to shares of the Funds that are acquired after the grant of the requested exemptive relief and after the Funds' prospectuses are amended to disclose the CDSC arrangement. The CDSC will be calculated and apply separately for each portfolio or series of an investment company organized in series form.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the 1940 Act exempting them from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rules 22c-1 and 22d-1 thereunder to permit the imposition and waiver of the proposed CDSC.

2. Section 6(c) of the 1940 Act authorizes the SEC to conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from any provisions of the 1940 Act if the exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Applicants submit that the imposition of the proposed contingent deferred sales charge arrangement is fair, is consistent with the policy and provisions of the 1940 Act, is in the best interests of those shareholders upon whom it is imposed and otherwise meets the exemptive standards of Section 6(c).

3. Applicants argue that the imposition of the CDSC in the manner described above would not cause shares of the Funds to fall outside the definition of "redeemable security" in section 2(a)(32) of the 1940 Act. Applicants believe that the imposition of the CDSC will not prevent a redeeming shareholder from receiving his proportionate share of the current net assets of a Fund, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur. However, in order to avoid uncertainty in this regard, Applicants request an exemption from the operation of section 2(a)(32) of the 1940 Act to the extent necessary to implement the proposed CDSC arrangement and maintain the Funds' qualification as open-end companies under section 5(a)(1) of the 1940 Act.

4. Applicants believe that the charge is consistent with the definition of "sales load" in section 2(a)(35), except for its timing. The CDSC is paid to the Distributor to reimburse it solely for expenses related to the sale of shares and therefore Applicants submit that this arrangement is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants contend that the deferral of the sales charge and its contingency upon the occurrence of an event which may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicants request an exemption from the provisions of section 2(a)(35), to the extent necessary to implement the proposed CDSC arrangement.

5. Section 22(c) of the 1940 Act empowers the SEC to make rules and regulations with respect to the redeemable securities of any registered company. Rule 22c–1 under the 1940 Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from redeeming any such security except at a price based on the current net asset value of such security. In order to avoid any possibility that questions might be raised as to the potential applicability of section 22(c) and Rule 22c–1, Applicants request an exemption from those provisions to the extent necessary to implement the proposed CDSC arrangement.

6. Rule 22d–1, in substance, provides an exemption from Section 22(d) to permit the variation or elimination of sales loads to particular classes of investors or transactions, provided certain conditions are met. To avoid any uncertainty with regard to the applicability of section 22(d) and Rule 22d–1, Applicants request an exemption from those provisions to implement the proposed CDSC arrangement, including its provisions for waivers and credits.

Applicants' Condition

If the requested order for exemption is granted, Applicants expressly agree that they will comply with proposed Rule 6c–10 under the 1940 Act, Investment

Company Act Release No. 16619 (Nov. 2, 1988), as such Rule is currently proposed and as it may be reproposed, adopted, or amended in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-982 Filed 1-14-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare Draft Environmental Impact Statement; Salt Lake City International Airport, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Northwest Mountain Region of the FAA announces: (1) The FAA, acting as lead agency with the Corps of Engineers acting as a Cooperating Agency, intends to prepare Draft and Final Environmental Impact Statements (EIS) concerning a proposal by the Salt Lake City International Airport Authority to construct a new 12,000 foot air carrier runway, 16R/35L, at Salt Lake City International Airport and (2) that the Federal EIS scoping process will consist of a time period for interested agencies and persons to submit written comments as to their concerns and topics which they believe should be addressed in the Draft EIS.

DATES: In order to be considered, written comments must be received on or before February 14, 1992. Send comments to: Mrs. Barbara Johnson, Federal Aviation Administration, 5440 Roslyn, suite 300, Denver, Colorado 80216-6026.

Questions concerning the draft EIS or the process being applied by the FAA in connection with this project should also be directed by Mrs. Barbara Johnson.

SUPPLEMENTARY INFORMATION: Information, data, views and comments obtained in the course of the scoping process may be used in the preparation of the draft EIS. The purpose of this notice is to inform the public, State, local, and Federal governmental agencies of the fact that a draft EIS will be prepared and to provide those interested in doing so with an opportunity to present their views, comments, information, data, or other relevant observations concerning the environmental impacts related to implementation of this proposal.

The proposed development includes the following items:

(1) Construction of a new runway 16R/34L (12,000' by 150')) with a full taxiway system,

(2) Relocation of a drainage canal,

(3) Relocation of powerlines,

(4) Other development as described in the 1988 Salt Lake City International Airport Master Plan Update, and

(5) Development of a wetland mitigation site.

An Environmental Assessment on the proposed actions, prepared by the Salt Lake City Airport Authority, is available for public review at the following locations:

Salt Lake City Airport Authority, 776 North Terminal Drive, Terminal One, 2nd Floor, Salt Lake City International Airport.

Salt Lake City Library, Main Branch, 209 E. 500 S., Salt Lake City, Utah.

Marriott Library, Bldg. 330, Documents Section, University of Utah, Salt Lake City, Utah.

Salt Lake County Library, West Valley Branch, 2880 W. 3650 S., West Valley City, Utah.

Salt Lake County Library, Whitmore Branch, 2197 E. 7000 South, Sandy Utah.

Salt Lake County Library, Kearns Branch, 5350 S. 4220 W., Salt Lake City, Utah.

Davis County Library, South Branch, 725 S. Main, Bountiful, Utah.

Davis County Library Headquarters, 38 S. 100 E., Farmington, Utah.

Issued in Renton, Washington, January 7, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-1019 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

Portland International Airport, OR; Notice of Intent to Rule

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to impose and use the Revenue from a Passenger Facility Charge (PFC) at Portland International Airport, Portland, Oregon.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose a PFC at Portland International Airport, and use the revenue from a PFC at Portland International Airport. The PFC and its use is proposed under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and 14 CFR part 158.

On January 3, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Portland, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 9, 1992.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, J. Wade Bryant, Manager, Seattle Airports District Office, 1601 Lind Avenue, NW., suite 250, Renton, WA 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Mr. Steve Schreiber, Senior Manager—Aviation Finance, of the Port of Portland, at the following addresss: Port of Portland, P.O. Box 3529, Portland, OR 97208.

Comments from air carriers and foreign air carriers may be in the same form as provided to the Port of Portland under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn T. Read, Oregon Engineer, Seattle Airports District Office, 1601 Lind Avenue, NW., Suite 250, Renton, WA 98055-4056, (206) 227-2629. The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1992.

Proposed charge expiration date: May 31, 1994.

Total estimated PFC Revenue: $18,080,000.00.

Brief description of proposed projects:

(a) New Taxiway "C"—construction of new 11,000-foot taxiway parallel to runway 10R-28L;

(b) Terminal Enplaning Roadway Expansion—expands roadway adjacent to terminal;

(c) Central Utility Plant Expansion—expands central utility plant due to terminal expansion demands;

(d) Airport Way Rehabilitation and Modification—rehabilitates public access road to the airport.

AVAILABILITY OF APPLICATION: Any person may inspect the application in person at the FAA office listed above. In

addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Portland.

Issued in Renton, Washington on January 3, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-1009 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 9, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Savings Bonds Division

OMB Number: New.
Form Number: SBD 2003.
Type of Review: New collection.
Title: Authorization for Purchase and Request for Change United States Series EE Savings Bonds.
Description: This form is needed to authorize employers to allot funds from employees' pay for the purchase of U.S. Savings Bonds. Some 1.6 million employees may use this form during any calendar year.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 1,600,000.
Estimated Burden Hours Per Respondent: 85 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 33,333 hours.
Clearance Officer: William L. McCarney (202) 377-7796, U.S. Savings Bonds Division, room 8035, 800 K Street, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-1056 Filed 1-14-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 9, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0180.
Form Number: None.
Type of Review: Revision.
Title: (MA)—Minimum Security Devices and Procedures, Reports of Crime and Suspected Crimes, and Bank Secrecy Act Compliance (12 CFR part 21).
Description: These records and reports are needed to promote and monitor bank security to ensure bank safety. The information is used by banks, the OCC and other agencies for bank security and law enforcement purposes. National banks are the affected public.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 4,100.
Estimated Burden Hours Per Response/ Recordkeeper: 36 minutes.
Frequency of Response: On occasion, Annually.
Estimated Total Reporting Burden: 20,330 hours.
Clearance Officer: John Ference (202) 874-4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-1057 Filed 1-14-92; 8:45 am]

BILLING CODE 4810-33-M

Departmental Offices, Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on February 4 and 5, 1992, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on February 4 and the preparation of a written report to the Secretary of the Treasury on February 5, 1992.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advise from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advise has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financial plans may

not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: January 7, 1992.

Jerome H. Powell,

Assistant Secretary (Domestic Finance).

[FR Doc. 92-975 Filed 1-14-92; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 2-92]

Treasury Notes of January 15, 1999, Series E-1999

January 2, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of January 15, 1999, Series E-1999 (CUSIP No. 912827 D7 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 15, 1992, and will accrue interest from that date, payable on a semiannual basis on July 15, 1992, and each subsequent 6 months on January 15 and July 15 through the date that the principal becomes payable. They will mature January 15, 1999, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, January 8, 1992, prior to 12:00 noon, Eastern Standard time, for noncompetitive tenders and prior to 1:00 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 7, 1992, and received no later than Wednesday, January 15, 1992.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specific yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $5,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. The following institutions may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)); and government securities broker/dealers, registered with the Securities and Exchange Commission that are registered or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities and Exchange Act of 1934, as amended by the Government Securities Act of 1986. Others are permitted to submit tenders only for their own account.

3.5. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate

will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.5. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, January 15, 1992. Payment in full most accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, January 13, 1992. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–1138 Filed 1–10–92; 4:16 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 10
Wednesday, January 15, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 10:30 A.M., January 31, 1992.

PLACE: Park Hyatt, 24th at M Street, NW., Washington, DC 20037.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c) (1) and (9)(B) and 22 CFR 1302.4 (a) and (h).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government as they relate to international shortwave radio broadcasting into Eastern Europe and the Soviet Union.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Mark G. Pomar,

Executive Director.

[FR Doc. 92-1166 Filed 1-13-92; 11:26 am]

BILLING CODE 6155-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 3:00 p.m., January 21, 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Review of KPMG Peat Marwick audit report for fiscal year 1991 entitled "Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: January 13, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92-1190 Filed 1-13-92; 1:14 pm]

BILLING CODE 6760-01-M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, April 30, 1992, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, April 30, from 10:00 a.m. to 5:30 p.m., on Friday, May 1, from 9:00 a.m. to 5:30 p.m., and on Saturday, May 2, from 9:00 a.m. to 1:00 p.m.

PLACE: The Sheraton Tallahassee Hotel, 101 South Adams Street, Tallahassee, Florida 32301.

STATUS: The executive session will be closed to the public. At it, matters relating to budget, personnel, internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTER TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. A primary focus of the meeting will be the conservation and recovery of the West Indian manatee. Among other major issues, the Commission also plans to consider high seas driftnet fisheries and the incidental take of marine mammals in commercial fisheries after 1 October 1993.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, N.W., Room 514, Washington, D.C. 20009, 202/606-5504.

Dated: December 20, 1991.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 92-1167 Filed 1-13-92; 11:25 am]

BILLING CODE 6820-31-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 13, 20, 27, and February 3, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 13

Thursday, January 16

9:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
2:30 p.m.
Periodic Briefing on EEO Program (Public Meeting)

Friday, January 17

10:00 a.m.
Briefing on Status of Implementation of Safety Goal Policy Statement (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Motion to Reopen the Record in the Comanche Peak Proceeding (Tentative)
2:00 p.m.
Briefing on Progress of Research in the Area of Organization and Management (Public Meeting)

Week of January 20—Tentative

Tuesday, January 21

12:30 p.m.
Briefing on Enforcement Strategy Related to Contaminated Sites (Closed—Ex. 9 and 10)

Thursday, January 23

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 27—Tentative

There are no Commission meetings scheduled for the week of January 27.

Week of February 3—Tentative

Wednesday, February 5

1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Thursday, February 6

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that

no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504–1292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 3, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92–1184 Filed 1–13–92; 11:28 am]

BILLING CODE 7590–01–M

federal register

Wednesday
January 15, 1992

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Northern Spotted Owl; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) designates critical habitat for the northern spotted owl (*Strix occidentalis caurina*), a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The northern spotted owl, referred to herein as spotted owl or owl, is a forest bird that inhabits coniferous and mixed conifer-hardwood forests over a range that extends from southwestern British Columbia through western Washington, western Oregon, and northwestern California south to San Francisco Bay.

This critical habitat designation provides additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by a Federal agency. As required by section 4 of the Act, the Service considered the economic and other relevant impacts prior to making a final decision on the size and scope of critical habitat. The Service excluded some areas from designation as critical habitat due to economic and other relevant information. Final critical habitat units are designated solely on Federal lands.

EFFECTIVE DATE: This rule becomes effective February 14, 1992.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 Northeast 11th Street, Portland, Oregon 97232. The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Fish and Wildlife Enhancement at the above address (503/231-6159 or FTS 429-6159; Mr. Barry S. Mulder, Spotted Owl Coordinator, at the above address (503/231-6730 or FTS 429-6730); and Dr. M.L. Schamberger, Chief, Terrestrial Branch, U.S. Fish and Wildlife Service, National Ecology Research Center, 4512 McMurray Avenue, Fort Collins, Colorado 80525-3400, FTS 323-5409 or (303) 226-9409.

SUPPLEMENTARY INFORMATION:

Introduction

The Endangered Species Act of 1973, as amended (Act) requires the Service to designate critical habitat to the maximum extent prudent and determinable concurrently with listing a species as endangered or threatened. The Service listed the northern spotted owl as a threatened species on June 26, 1990, primarily due to concern over widespread habitat loss and modification, and inadequacy of existing regulatory mechanisms. The Service recognized that critical habitat would be a valuable tool in the conservation of the owl, but lacked sufficient information upon which to base a critical habitat determination at that time. In such cases the Act provides one additional year to determine whether to designate critical habitat.

On August 10, 1990, several environmental organizations filed a motion seeking in *Northern Spotted Owl* v. *Lujan*, No. C88-573Z (W.D. Wash.), to compel the Service to immediately propose critical habitat. On February 26, 1991, the Court ruled that the Service had violated the Act in failing to designate critical habitat concurrently with listing the owl (*Northern Spotted Owl* v. *Lujan*, 758 F.Supp. 621 (W.D. Wash.)). The Court ordered the Service to propose a rule on critical habitat and to publish a final rule at the earliest possible time permitted under the appropriate regulations.

The Service published a proposed rule to designate critical habitat for the northern spotted owl on May 6, 1991 (56 FR 20816). The May 6 proposal announced the Service's intention to publish a revised critical habitat proposal in early August 1991 to allow for the fullest possible consideration of public comment on the economic and other relevant impacts of a designation and the subsequent completion of the Service's economic analysis. On August 13, 1991, the Service published its revised proposal which superseded all aspects of the previous proposal (56 FR 40001). The final rule represents the Service's decision on this issue. The Service may revise critical habitat in the future following development and implementation of a Service-approved recovery plan for the northern spotted owl.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: "(I) The specific areas within the geographic area occupied by a species * * * on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) that may require special management considerations or protection; and (II) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary," i.e., the species is recovered and removed from the list of endangered and threatened species. Section 3 further states that in most cases the entire range of a species should not be encompassed within critical habitat.

Role in Species Conservation

The use of the term "conservation" in the definition of critical habitat indicates that its designation should identify lands that may be needed for a species' eventual recovery and delisting. However, when critical habitat is designated at the time a species is listed, the Service frequently does not know exactly what may be needed for recovery. In this regard, critical habitat serves to preserve options for a species' eventual recovery.

The designation of critical habitat will not, in itself, lead to recovery, but is one of several measures available to contribute to a species' conservation. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not they are currently occupied by the listed species, thus alerting the public to the importance of an area in the conservation of a listed species. Critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. The added protection of these areas may shorten the time needed to achieve recovery. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Designating critical habitat does not create a management plan for a listed species. Designation does not establish numerical population goals, proscribe specific management actions (inside or

outside of critical habitat), nor does it have a direct effect on areas not designated as critical habitat. Recovery planning and critical habitat designation are different processes. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans, management plans, and through section 7 consultation.

In addition to considering biological information in designating critical habitat, the Service also considers economic and other relevant impacts of designating critical habitat. The Service may exclude areas from critical habitat when the benefits of such exclusion outweigh the benefits of including the areas within critical habitat, provided that the exclusion will not result in the extinction of a species.

Critical habitat identifies specific areas essential to the conservation of a species. Areas not currently containing all of the essential features, but with the capability to do so in the future, may also be essential for the long-term recovery of the species, particularly in certain portions of its range, and may be designated as critical habitat. However, not all areas containing the features of a listed species' habitat are necessarily essential to species' survival. Areas not included in critical habitat that contain one or more of the essential elements are still important to a species' conservation and may be addressed under other facets of the Act and other conservation laws and regulations. Some areas containing the requisite features may have been excluded for economic reasons. All designated areas may also be of considerable value in maintaining ecosystem integrity and supporting other species, although that is not a consideration in designating critical habitat.

The process of designating critical habitat for the northern spotted owl consisted of three steps that are explained in this document. The first step was to determine the elements and areas essential to the owls' conservation. This step was completed in the proposal process and is summarized in the sections on Primary Constituent Elements, Criteria for Identifying Critical Habitat, and the Results of the Applying the Selection Criteria. The second step was to determine the potential costs of the proposed designation, which was completed in the proposal process and is only briefly noted here in the Economic Summary of the August 13 Proposal. The final step was to decide which areas should be excluded based upon economic and other relevant impacts, and to determine the costs associated with the final designation. This step is discussed in the Summary of the Exclusion Process, the Effects of the Designation, the Economic Impacts of the Final Designation, and Available Conservation Measures sections. A section on biodiversity is included to highlight the importance of that issue and its relationship to the northern spotted owl.

Primary Constituent Elements

In determining which areas to designate as critical habitat, the Service considers those physical and biological attributes that are essential to a species' conservation. In addition the Act stipulates that the areas containing these elements may require special management considerations or protection. Such physical and biological features, as stated in 50 CFR 424.12, include, but are not limited to, the following:

—Space for individual and population growth, and for normal behavior;
—Food, water, or other nutritional or physiological requirements;
—Cover or shelter;
—Sites for breeding, reproduction, rearing of offspring; and
—Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service is required to base critical habitat designations upon the best scientific and commercial data available (50 CFR 424.12). In designating critical habitat for the northern spotted owl, the Service has reviewed its overall approach to the conservation of the spotted owl undertaken since the proposed listing of the owl in 1989. This process has resulted in the most thorough study of owl habitat currently available.

The Service has also reviewed all available information that pertains to the habitat requirements of this subspecies, including material received during the public comment period from State and Federal agencies and other entities. The Service has met and discussed various aspects of critical habitat for the owl and related issues with representatives of the Interagency Scientific Committee (ISC), the Northern Spotted Owl Recovery Team (Recovery Team), the Forest Service's Environmental Impact Statement (EIS) planning team, the Scientific Panel on Late-Successional Forest Ecosystems (Scientific Panel), and State and Federal agencies. The purpose was to gather and discuss information useful in the designation. The Service had access to and shared information with these efforts. The Service's cumulative administrative records for the northern spotted owl contain more specific and definitive scientific information than the records for most other listed species.

For a thorough discussion of the ecology and life history of this subspecies, see the ISC's A Conservation Strategy for the Northern Spotted Owl (hereafter referred to as the ISC Plan) (Thomas *et al.* 1990), the Service's three status reviews (USDI 1987, 1989, 1990), and the June 26, 1990, final rule listing the northern spotted owl as a threatened species (55 FR 26114). These documents incorporate the majority of current biological information on the subspecies used to develop this rule. The Service also reviewed biological data from owl studies made available since the summer of 1990 (e.g., Buchanan 1991, Irwin *et al.* 1991, Lehmkuhl 1991, Snetsinger *et al.* 1991, Zabel et al. 1991).

There were very few new references that provided additional information on characteristics of owl habitat. None of the new biological data contradicted previous studies on the ecology of the subspecies summarized in the above-referenced documents. The following information summarizes the key elements of the spotted owl's habitat that are pertinent to the designation of critical habitat.

Habitat Characteristics

The Service has determined that the physical and biological habitat features, referred to as the primary constituent elements, that support nesting, roosting, foraging, and dispersal are essential to the conservation of the northern spotted owl. These elements were determined from studies on owl habitat preferences, including habitat structure and use and prey preferences, throughout the range of the owl.

Spotted owl habitat consists of four components: (1) Nesting, (2) roosting, (3) foraging, and (4) dispersal. Currently, the land managing agencies characterize spotted owl habitat under the term "suitable." However, suitable is a term that generally refers only to the nesting, roosting, and occasionally the foraging portion of the habitat used by northern spotted owls, and has not historically been used to characterize all four types of spotted owl habitat.

Therefore, under that definition most areas where spotted owls are found contain both "suitable" and "unsuitable" habitat. In addition to the "suitable" habitat that supports all facets of the owl's life history, habitat that is currently labeled as "unsuitable"

may also contribute to the habitat base that supports foraging and dispersal needs. This inconsistency has affected the definitions used by the various land managing entities.

Presently, many definitions of "suitable" spotted owl habitat are used throughout the species' range. As a result, existing estimates of the amount of spotted owl habitat may be misleading. Current estimates of suitable habitat (i.e., for nesting, roosting, and foraging) do not contain estimates of the additional amount of forested acres that may meet only the dispersal needs of the owl.

Forests in the northwestern United States exhibit natural variation in terms of species composition, stand age, climatic and soil conditions, slope steepness and aspect, and other factors. Forest structure varies in several measurable ways: Canopy closure varies from closed to relatively open, as a function of tree size, stocking density, and species composition; canopy layering ranges from multi-layered stands composed of two or more tree heights to single-layered stands; average tree diameter varies with tree age, species, and soil and climatic conditions; and the amount of decadence (deformed, broken, and rotting trees, standing and down dead material, etc.) varies with factors such as stand age, and fire, wind, and forest pest influence. Factors such as rainfall, elevation, slope, and aspect influence microclimatic conditions.

Forest characteristics associated with spotted owls usually develop with increasing forest age, but their occurrence may vary by location, past forest practices, and stand type, history, and condition. Although spotted owl habitat is variable over its range, some general attributes are common to the subspecies' life-history requirements throughout its range. The attributes of nesting and roosting habitat typically include a moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy with large (> 30 inches diameter at breast height (dbh)) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence); large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly (Thomas *et al.* 1990).

Spotted owls use a wider array of forest types for foraging and dispersal, including more open and fragmented habitat, although less is known about the characteristics of foraging and dispersal habitat. Habitat that meets the species' needs for nesting and roosting also provides for foraging and dispersal. However, habitat that supports dispersal or foraging does not always support the other constituent elements and is not considered adequate for other purposes.

Although the term "dispersal" frequently refers to post fledgling movements of juveniles, for the purposes of this rule the Service is using the term to include all movement and to encompass important concepts of linkage and connectivity among owl subpopulations. Although habitat that allows for dispersal may currently be marginal or unsuitable for nesting, roosting, or foraging, it provides an important linkage function among blocks of nesting habitat both locally and over the owl's range that is essential to the owl's conservation. Dispersal habitat, at a minimum, consists of stands with adequate tree size and canopy closure to provide protection from avian predators and at least minimal foraging opportunities; there may be variations over the owl's range (e.g., drier sites in the east Cascades or northern California).

Foraging habitat is more difficult to describe, but may exist in a continuum between the dispersal habitat and nesting or roosting habitats described above. Foraging habitat varies across the range of the owl depending upon forest structure and prey availability. It is currently thought to consist mainly of attributes similar to those in nesting and roosting habitat for most of the owl's range, but may not always support successfully nesting pairs.

The age of a forest is not as important in determining habitat suitability for owls as are vegetational and structural elements. Northern interior forests typically require 150 to 200 years to attain the attributes of nesting and roosting habitat; however, characteristics of nesting and roosting habitat are sometimes found in younger forests, usually those with significant old-age remnant trees from earlier stands. These remnant attributes are products of fire, wind storms, or previous logging operations that removed only some of the trees. As one moves to lower elevations or south and toward the coast in the species range, these attributes tend to be attained at younger ages due to changes in site productivity, microclimate, and other factors. However, differences in growth rates exist between wet and dry-site conditions which may affect how quickly these attributes develop.

In the coastal redwoods of California, spotted owls have been observed nesting in stands that had acquired characteristics associated with owl presence in as little as 40 to 60 years (Pious 1989). They develop these habitat characteristics in a shorter time following harvest than other timber-types because of unique characteristics and conditions, such as fast-growth, good soil, high precipitation levels, a long growing season, an understory of other conifers and hardwoods, and an abundant prey base (Thomas *et al.* 1990). Although the forests in this area are younger in age than in other parts of the owl's range, structural habitat characteristics associated with owl presence are similar to those observed elsewhere.

Nearly all nest and roost sites are located in the portions of forest stands containing the oldest trees (Thomas *et al.* 1990). Owl survey data indicate that northern spotted owls are disproportionately found in association with older forests (Thomas *et al.* 1990, USDI 1990a). Although owls are occasionally found in younger forests, densities are significantly higher in older forests or forest stands having the characteristics of older forests, usually due to remnant older trees or other factors. Owls having an array of habitat types within their home ranges select for older forest (> 200 years), use mature forest (100–200 years) in proportion to its availability, and tend to avoid younger forest (< 100 years) or use it in relation to its availability (USDI 1989). Different studies over the owl's range demonstrate that owls select older forests for foraging (USDI 1990a); roost sites are also strongly associated with older forests.

Northern spotted owls have large home ranges and utilize large tracts of land containing significant acreage of older forest to meet their biological needs (USDI 1990a). As the quality and quantity of habitat declines, annual home range sizes increase. Therefore, home range sizes are not uniform across the range of the owl and vary among and within provinces. Thomas *et al.* (1990) indicated median annual pair home range sizes varied from a high of over 9,000 acres for the Olympic Peninsula to a low of about 3,000 acres for the Oregon Cascades. Individual annual pair home range sizes varied from as small as 1,000 acres in the Klamath Province to nearly 30,000 acres in the Washington Cascades (USDI 1990a).

Northern spotted owls have been observed over a wide range of elevations, but avoid high elevation, subalpine forests. The range of elevation in which spotted owls have been observed extends from 70 feet above sea

level in the Olympic Peninsula of Washington to over 6,000 feet above sea level in California. The range of elevations used by owls generally increases with decreasing latitude. Higher quality habitat is usually found at lower elevations.

The northern spotted owl is known from most of the major types of coniferous forests from southwestern British Columbia through western Washington, western Oregon, and northern California south to San Francisco Bay wherever forested habitat still exists. Vegetative composition of spotted owl habitat changes from north to south within the owl's range. The spotted owl inhabits forests dominated by Douglas-fir (*Pseudotsuga menziesii*) and western hemlock (*Tsuga heterophylla*) in coastal forests of Washington and Oregon. At higher elevations on the west slope of the Cascades in Washington and Oregon, stands containing Pacific silver fir (*Abies amabilis*) are commonly used by owls. Owls use mixed conifer stands that may include Douglas-fir, grand fir (*Abies grandis*), and ponderosa pine (*Pinus ponderosa*) on the east slope of the Cascades.

In southern interior Oregon, habitat changes to a drier Douglas-fir/mixed conifer composition with a corresponding shift in primary prey species, from northern flying squirrels (*Glauocomys sabrinus*) to woodrats (*Neotoma* spp.). In California, spotted owls most commonly use Douglas-fir, mixed-conifer, and coastal redwood (*Sequoia sempervirens*) forest types but are also found in mixed conifer-hardwood habitat types and in stands dominated by ponderosa pine in the eastern portion of the range.

Historically, habitat for the northern spotted owl was fairly continuous, particularly in the wetter parts of its range in northern California and most of western Oregon and Washington. Habitat for the owl in the drier portions of its range in parts of southern Oregon and northern California is not continuous, but occurs naturally in a mosaic pattern. This mosaic occurs in the southern interior portions of the bird's range, but also occurs to some extent in the eastern Cascades in Oregon and Washington.

Forest Practices

Forest structure also differs significantly because of varied timber management practices within the range of the spotted owl. Current management practices, such as clearcutting, even-aged management, and short rotations preclude development of suitable habitat. Timber harvest (predominantly clearcutting) along with natural perturbations results in the loss of owl habitat and increases forest fragmentation. In many areas, management practices have left small fragmented patches of older forests, separated by large stretches of younger forests that have yet to develop habitat characteristics used by owls. These practices have had an impact on the current presence and distribution of spotted owls, their survival and reproductive success, and their ability to successfully disperse, and also may have led to increased competition with barred owls (*Strix varia*) and predation by great horned owls (*Bubo virginianus*) and other open-forest predators. As habitat has become more fragmented, the direct effects of increased competition and predation may have become more pronounced.

Often, when forests are clearcut, the area is replanted with a single or few species of the same age. Site-preparation activities, such as prescribed burning, often remove the dead standing and down material. As timber plantations increase in age, timber managers may control competing vegetation, such as hardwoods, through the use of herbicides or mechanical methods. These actions tend to reduce or delay the ability of the site to attain the characteristics normally associated with owl presence.

Timber harvest, employing a pattern of small dispersed clearcuts, eventually leads to a situation where the remaining patches of older forests are so small as to be influenced by edge effects (e.g., windthrow, microclimate changes) which may reduce the ability of the area to support successfully reproducing owls. These types of situations may be most noticeable where past timber harvesting has been heaviest, e.g., in the Oregon Coast Ranges and on Bureau of Land Management (Bureau) lands that are interspersed in a checkerboard pattern with heavily harvested private lands. Because of the extent of past harvest using these patterns, the remaining effective (i.e., to support successful reproduction) suitable nesting and roosting habitat may be considerably less than the total amount of owl habitat remaining over the owls' range.

Historical logging practices in the drier portions of the species range, such as the mixed conifer zone of southern Oregon, along the east side of the Cascades in Oregon and Washington, and in parts of interior northern California, consisted of more selective timber harvesting than in other areas, often leaving remnant patches of stands of varying ages and with some older forest characteristics. The uneven-age management practices usually result in more ecologically diverse stands. Techniques such as individual tree selection, retention of hardwoods, and retention and/or creation of standing and down dead material seem to replicate more natural forest conditions sooner following harvest than do more intensive management practices such as clearcutting. Spotted owls are found more often in stands managed under these prescriptions (which may result in greater diversity) than in those subject to even-age regeneration following clearcutting, although the contribution of uneven-aged managed stands to maintaining a viable owl population is unknown.

Current and historic spotted owl habitat loss is largely attributable to timber harvesting and land conversion practices, although natural disturbances such as forest fires and blowdowns have caused losses as well. Habitat for northern spotted owls has been declining since the arrival of European settlers. Although the extent of nesting and roosting habitat before the 1800s is difficult to quantify, estimates of 17.5 million acres in 1800 and the current estimate of 7.5 million acres (Thomas *et al.* 1990) suggest a reduction of about 60 percent in the past 190 years. Other estimates suggest that the reported decline in historical habitat may have been as high as 83 to 88 percent (USDI 1990, Booth 1991). Historically, habitat reduction has not been uniform throughout the owl's range, but has been concentrated at lower elevations, particularly in the Coast Ranges. Past logging practices may have had the greatest impact on the status of the owl in northwestern Oregon and southwestern Washington.

Although timber harvest in the Pacific Northwest has a long history, spotted owl habitat over its range has decreased most rapidly since the 1960s, thus leading to listing the owl as threatened. Based on information from the Forest Service (USDI 1990a), the amount of suitable spotted owl habitat (i.e., for nesting, roosting, and foraging) on non-reserved Forest Service lands in Washington and Oregon has declined due to harvest by approximately 3.4 million acres (60 percent) over the last 30 years; there are no estimates on the decline of other forest types such as dispersal habitat. Of the nearly 7.2 million acres of nesting and roosting habitat on Federal lands, about 60 percent is currently classified as timber production land, 28 percent is withdrawn (mostly wilderness and parks), and 12 percent unsuitable for

timber production; much of the reserved and land unsuitable for timber production is also unsuitable for owls (USDI 1990a).

Forest-management practices result in a forest age distribution unnaturally skewed toward younger stands with rotation ages reflecting the demand for timber. Harvest currently comes from a broad spectrum of age classes, but in two decades, harvest will almost entirely come from young stands as the older stands are harvested (USDI 1990). Planned harvest in the next 50 years is expected to reduce the average age of trees harvested to 80–90 years or less on Forest Service lands, to 50-year trees on Bureau lands, and to 45–65 years on private lands (Sessions *et al.* 1990).

While future events are difficult to predict, past trends strongly suggest that much of the remaining unprotected spotted owl habitat could disappear within 20 to 30 years. On some Forests and Bureau Districts, the unprotected habitat could disappear within 10 years (USDI 1990a). The Bureau reported in 1987 that at the current rate of harvest older forest on their lands will be harvested within 25 years. These recent trends may have had a large impact on the sustainability of current harvest rates into the future as well as the ability of the ecosystem to withstand continuing rapid change for all species.

These patterns have led to concern over the isolation of local and provincial populations of owls, which in turn could lead to further genetic and especially demographic instability. Without changes in forest management practices, remaining suitable habitat will exist as small islands of varying size, spacing, and suitability, and recruitment of new suitable habitat will not offset the rate of loss and conversion. As a result, local populations will become smaller in number and more isolated from other populations, which increases the risk of extirpation of such populations. Those habitat-driven processes of local colonization and extirpation will lead to further instability of the subspecies.

Provincial Variation

The range of the northern spotted owl encompasses a number of physiographic provinces that depict local climatic and geological conditions in the Northwest (Franklin and Dyrness 1973); the report covered only Oregon and Washington. These conditions are responsible for the development of the respective vegetative landscapes within each province. The Forest Service (USDA 1986) used this information as a method of subdividing owl populations for administrative purposes. From north to south, their subdivisions included the Washington Cascades, Olympic Peninsula, Washington and Oregon Coast Ranges, Oregon Cascades, and Klamath Mountains; California was not originally divided into provinces. The ranges of the northern and California spotted owls (*S. o. occidentalis*) adjoin in the Pit River area of Shasta County, California; the Recovery Team is currently reviewing the location of the line dividing the two subspecies.

Thomas *et al.* (1990) used this information to identify 10 separate areas that reflect differences in spotted owl numbers, distribution, habitat use patterns, and habitat conditions. Their provincial breakdown includes the Olympic Peninsula, Washington Cascades East and West, Southwestern Washington, Oregon Cascades East and West, Oregon Coast Ranges, Klamath Mountains (Oregon/California), Northern California Coast Range, and California Cascades/Modoc. The following provides a summary of problems identified in each area (Thomas *et al.* 1990, USDI 1990a, USFWS 1991c):

—Olympic Peninsula: Isolation of owls due to lack of linkage to other provinces; poor distribution and quality of existing habitat; high level of fragmentation; low population size; and variable to low reproductive success;

—Washington Cascades East and West: Poor distribution and quality of existing habitat; high level of natural and manmade fragmentation (e.g., north Cascades); high susceptibility to catastrophe (east side); low population size; low reproductive success; competition with barred owls; and localized deficiencies in habitat connectivity;

—Southwest Washington: Lack of connectivity; little remaining habitat; poor distribution and quality of existing habitat; very low population size; and lack of Federal ownership;

—Oregon Cascades East and West: Localized deficiency in habitat connectivity; poor distribution and quality of existing habitat in some areas; high level of fragmentation in some areas (e.g., areas of concern); high susceptibility to catastrophe (east side); and low population size in some areas (e.g., east side);

—Oregon Coast Ranges: Low population size; poor distribution and quality of existing habitat; high level of fragmentation; lack of sufficient linkage to other provinces; low reproductive success; high susceptibility to catastrophe; and large areas of land not in Federal ownership;

—Klamath Mountains (Oregon/California): Poor distribution and quality of existing habitat in some areas; high level of natural and manmade fragmentation; high susceptibility to catastrophe; and localized deficiencies in habitat connectivity;

—Northern California Coast Range: High level of human-induced fragmentation; and little land in Federal ownership; and

—California Cascades/Modoc: Low population size; poor distribution and quality of existing habitat; high level of natural and human-induced fragmentation; poor reproductive success; competition with barred owls; insufficient linkage among provinces and with the range of the California spotted owl; high susceptibility to catastrophe; and interspersed landownership.

In its status reviews and biological opinions (USFWS 1991a, b, and c) addressing the spotted owl, the Service further identified areas of concern within these areas where habitat linkage within and among provinces is at greater risk due to past management practices. These areas are frequently associated with interspersed (checkerboard) Federal and non-Federal landownership patterns. The areas of concern are the Interstate 90 area within the Washington Cascades province; the Columbia Gorge, which encompasses an extensive zone between the Oregon and Washington Cascades provinces; Santiam Pass, within the Oregon Cascades province; the Interstate 5 area in southern Oregon; and the Shasta-McCloud area within the Klamath Mountains province of northern California. The Interstate 5 area consists of three distinct sub-areas: South Willamette-North Umpqua, Rogue-Umpqua, and South Ashland, where linkage among the Oregon Cascades East and West, Oregon Coast Ranges, and Klamath Mountains provinces is at risk.

These subdivisions provided more manageable subunits that were used to help conclude the designation process; these subdivisions will also help managers and others in reviewing local impacts to critical habitat. The subdivisions are identified in the Service's administrative record for this issue (USFWS 1991e).

Current Situation

Populations of spotted owls are not evenly distributed throughout its range due to variation in habitat conditions resulting from human-induced disturbances, often exacerbated by

landownership patterns, and to a lesser extent due to natural disturbances. Densities of owls vary over its range with the greatest numbers of spotted owls found in the west-central Cascade region of Oregon and the Coast Range of northwestern California (Thomas *et al.* 1990). The owl is uncommon in certain areas, e.g., in southwestern Washington and northwestern Oregon; thus, its distribution is now somewhat discontinuous over its range. About 90 percent of the known population (estimated over the past 5 years) is on Federal lands; about 19 percent is on Bureau lands in Oregon (USDI 1990a).

Comparatively good information exists on the amount, quality, stand size, distribution, and contiguity of nesting and roosting habitat on Federal lands and its ability to support spotted owls. Most owl habitat (about 7.2 million acres of nesting and roosting habitat, or about 85 percent of remaining habitat) is currently found on Federal lands throughout the owls' range; about 20 percent is reserved (in wilderness and parks). For Federal lands, about 2.4 million acres (34 percent) of this type of habitat occur in Washington, 3.6 million acres (51 percent) in Oregon, and 1.1 million acres (15 percent) in California (Thomas *et al.* 1990, USDI 1990a). There is little information available on the amount and distribution of additional habitat that supports dispersal; many areas especially on Bureau lands in Oregon are already below the standard recommended by the ISC (USFWS 1991a). The distribution of forest habitat that meets the dispersal criteria was not available. As a result of the distribution and abundance of habitat, Federal lands will play the significant role in the current protection and future conservation of the northern spotted owl.

About 400,000 acres of existing suitable habitat are found on State lands in the 3 States; the majority (about 300,000 acres) are found in Washington (G. Gould, Endangered and Threatened Species Coordinator, California Dept. of Fish and Game; D. Hays, Spotted Owl Coordinator, Washington Dept. of Wildlife; V. Johnson, Spotted Owl Coordinator, Oregon Dept. of Fish and Wildlife, pers. comm.). State lands tend to occur in large blocks of ownership; existing suitable habitat on these lands for the most part may be less widely dispersed and found in larger blocks than on private lands. More information exists for State lands in Washington then the other two states; there is less information about the quality of owl habitat on most State lands than on Federal lands. Because of availability and distribution, the quality of remaining habitat on State lands may be less than that on Federal lands.

State lands will be important to the recovery of the owl since most are located in key areas that provide inter- and intra-provincial linkage where little if any Federal lands occur (primarily in southwest Washington, northwest Oregon, and on the western Olympic Peninsula); currently few owls are known to occur on some of these lands. These lands support critical links to the Olympic Peninsula, across the Columbia Gorge between northwest Oregon and southwest Washington, and in the California Coast Range. This linkage function prompted the ISC to recommend designation of Habitat Conservation Areas (HCAs) incorporating key blocks of State lands.

Existing suitable spotted owl habitat on tribal lands (about 350,000 acres) is found mostly on five Indian Nations (Yakima and Quinault in Washington; Warm Springs and Grande Ronde in Oregon; and Hoopa in California) (C. Ogden, Spotted Owl Coordinator, Bureau of Indian Affairs, pers. comm.). The majority of existing suitable habitat (about 250,000 acres) is found on the Yakima Indian Nation; information on the quality, stand size, and distribution of suitable habitat on the other four areas is variable. The Yakima Nation predominantly harvests timber selectively throughout their lands that currently support pairs of spotted owls.

Private lands in Oregon and Washington currently provide less than 500,000 acres of nesting and roosting habitat (< 5 percent of total owl habitat although estimates are incomplete) (Hays and Johnson, pers. comm.). Most stands are remnant patches of older trees that had not previously been harvested or stands resulting from past uneven-aged harvest methods. Incomplete information exists on the quality, stand size, and distribution of habitat on these lands or their present ability to support spotted owls (no habitat maps are available). Most known remaining stands of suitable habitat are highly dispersed in small patches throughout the range of the owl in these two States. Most of these lands may contribute in supporting dispersal and have the potential to support roosting and nesting (if trees are allowed to mature and harvest patterns change).

In California, about 500,000 acres of existing owl habitat occur on private lands; about 450,000 of these acres are found in the coastal redwoods, although estimates are incomplete (Gould, pers. comm.). Lands on the east side of the owls' range in California are similar to those described for private lands in Oregon and Washington. Many of these lands are selectively harvested and support owls. As discussed earlier, the redwoods present a unique situation due to their rapid growth and other factors. As a result, extensive tracts of habitat exist on private lands in the redwood region along with a large number of owl pairs. Although surveys on private lands in the redwoods have not been completed, and knowledge of owl distribution is incomplete, currently about 40 percent of the known pairs are found on non-Federal lands in California.

Previous Management Attempts

The history of the spotted owl issue began before the passage of the Endangered Species Act in 1973. Prior to listing the spotted owl as a threatened species, many different approaches to spotted owl management and research were being implemented by Federal and State resource agencies. Attempts to focus on owl management (primarily through temporary protection of pair sites) began in the mid-1970s, often in an uncoordinated and inconsistent fashion; coordination among involved parties has been a continuing problem.

Attempts to avoid conflicts by managing spotted owls and old growth forest habitat were increasingly unsuccessful in the 1980s and resulted in a series of lawsuits, challenges, or appeals under the National Environmental Policy Act, the Migratory Bird Treaty Act, the National Forest Management Act, and the Federal Lands Policy and Management Act mostly prior to the listing of the northern spotted owl in 1990. These lawsuits have had a significant impact on recent timber harvest levels and on the way that the Forest Service and Bureau have managed for spotted owls (i.e., changes in previous management of Spotted Owl Habitat Area (SOHAs), Spotted Owl Management Areas (SOMAs), or Bureau/Oregon Department of Fish and Wildlife (ODFW) agreement areas) and old growth, and have contributed to the current situation leading to the development of the ISC Plan (discussed below) and the listing of the owl. The challenges have also increased congressional interest in resolving the issue of forest management conflict in the Pacific Northwest (of which the owl is only one part). A complete discussion of the history and chronology of past spotted owl management attempts can be found in the ISC Plan (Thomas *et al.* 1990).

In light of the growing uncertainty surrounding the status of the spotted owl, an Interagency Agreement was signed in 1989 by the Bureau, the Service, the Forest Service, and the National Park Service establishing the ISC, a committee of scientists and management biologists, to reevaluate the current management status of the subspecies. The charter commissioning the ISC, mandated in section 318 of Public Law 101–121 in October of 1989, specifically directed the group to develop a scientifically-based conservation strategy for the northern spotted owl; the Charter did not address the Act. On April 4, 1990, the ISC Plan (Thomas *et al.* 1990) was released. This plan, which focused primarily on Federal and to a lesser extent State lands, used the best available biological information on the subspecies and outlined a strategy to ensure long-term viability for the owl in well-distributed numbers throughout its range.

The ISC developed a scientifically credible conservation strategy, applying principles of ecology and conservation biology and utilizing available spotted owl research data. The ISC recommended implementing a system of HCAs capable of supporting multiple pairs of spotted owls and a management standard, thought to be consistent with sustained yield management, for the remaining forest matrix to provide for dispersal among the HCAs (50–11–40 rule) where 50 percent of the forest habitat would be managed for 11 inch dbh and 40 percent canopy closure. In addition, the ISC recommended an adaptive management strategy to modify the plan as further data on the owl's biology and forest management were obtained.

The ISC concluded that, if fully implemented by the Forest Service and the Bureau beginning in Fiscal Year 1991 and with continuing adaptive management, the plan should provide for the owl's survival for a 100-year period. No individual part of this management plan was designed to stand alone and the future success of the plan was dependent upon full and timely implementation. Recommendations were also made to establish HCAs on key State lands (mostly in important linkage areas where there are few or no Federal lands) and habitat management on private and tribal lands throughout the owls' range was encouraged. Even with the development of the ISC Plan existing information indicates little change in the status or management of owl habitat since the owl was listed. Current forest management continues to reduce the quantity and quality of spotted owl habitat.

The ISC acknowledged a number of population and habitat risk factors associated with the long-term nature of the strategy that may increase over time. Full implementation of the ISC Plan provides protection for a spotted owl population that is smaller than currently known to inhabit Northwest forests, and, in fact, will probably result in a near-term loss of a "significant portion" of the existing spotted owl population (Thomas *et al.* 1990). The ISC Plan, under a worst-case scenario, may result in a protected population that would be about 50 percent of the currently known number of spotted owl pairs. The projected number was based on the loss of all owl pairs outside of HCAs, although some unknown number of pairs would occur in other reserved areas, forested areas unsuitable for timber harvest, and older managed forest stands.

The long-term success of the ISC Plan is based on the expectation that (1) the HCAs would eventually recover sufficiently to support the hypothesized numbers of owls and thus a stable population of owls and, (2) linkage through the surrounding forest matrix would suffice for genetic and demographic exchange among the HCAs and physiographic provinces. The ability of HCAs to contribute to maintaining a viable and recoverable owl population is directly correlated with the quality and quantity of suitable nesting and roosting habitat within these areas; no timber harvest was recommended by the ISC within HCAs.

The ISC Plan was prepared before the owl was listed as threatened and did not explicitly address recovery, critical habitat, or other aspects of the Endangered Species Act. The Service recognizes the importance of the ISC Plan and the essential role of the HCAs in the owls' conservation. The ISC Plan complements this critical habitat determination by stressing the need for protection for all facets of the owls' life history, including dispersal (through 50–11–40) outside of areas identified in this rule as critical habitat. The ISC concept emphasizes the importance of managing large and well-distributed blocks of suitable owl habitat that are sufficiently connected to maintain a stable and well-distributed population throughout the owls' range.

With respect to implementation of the ISC Plan, the Forest Service issued a notice on October 3, 1990, (55 FR 4112) which vacated their previous spotted owl management guidelines and established the agency's intent to conduct future timber operations "* * * in a manner not inconsistent with * * *" the ISC Plan. On August 6, 1990, the Bureau released its management guidelines, referred to as the Jamison Strategy (USDI 1990b), for the northern spotted owl that incorporated parts of the ISC Plan (i.e., HCAs, the 50–11–40 rule only where possible), while emphasizing the Bureau's requirements under the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA) to analyze other alternatives during preparation of new resource management plans. The Bureau's guidelines established interim guidance until Fiscal Year 1993 when resource management plans were to be completed.

Both the Forest Service and the Bureau are currently nearing completion of their resource management planning efforts. On May 23, 1991, the Western District Court in Seattle ruled against the Forest Service for failing to complete the NEPA process in vacating the old SOHA system and implementing the ISC Plan; the ruling affects timber sales in owl habitat. The Forest Service issued a draft EIS, in September 1991, including the ISC Plan as their preferred alternative. The Court requires them to complete their management plan and accompanying EIS by March 1992.

On September 11, 1991, the U.S. District Court in Oregon enjoined the Bureau's Jamison Strategy over the Bureau's failure to consult with the Service pursuant to section 7 of the Act. The injunction did not affect actual timber sales. The Bureau continued to harvest in some areas below the 50–11–40 standard and has proposed timber sales originally planned in 1990 within HCAs; salvage sales are also planned within HCAs. On June 17, 1991, the Service determined that 52 timber sales proposed by the Bureau, located primarily in the Oregon Coast Ranges, would jeopardize the continued existence of the northern spotted owl (USFWS 1991a). The Bureau modified 8 of the sales and requested exemption from the requirements of section 7 of the Act on the remaining 44 sales. The exemption ("God Squad") process is currently underway; some of these sales are in critical habitat.

Recent Developments

In late May 1991, the Agriculture and Merchant Marine and Fisheries Committees of the U.S. House of Representatives established a Scientific Panel to address the needs of all forest species and forest-related ecosystems in the Pacific Northwest so as to determine

a possible course of action for developing a long-term solution to current and expected resource conflicts with emphasis placed on conserving the spotted owl. On October 8, 1991, the Panel provided a report to Congress entitled "Alternatives for Management of Late-Successional Forests of the Pacific Northwest" which outlined 14 alternatives that provided different levels of protection for forest ecosystems along with different timber harvest levels (Johnson *et al.* 1991). The Scientific Panel concluded, among other things, that continued high timber harvest rates are inconsistent with ecosystem protection and both cannot be accomplished. At this time no decision has been made by Congress as to adoption of that report or any of its alternatives.

The Service is currently coordinating with a number of public and private entities to develop management or habitat conservation plans to help offset impacts to owls resulting from current or future actions. Private timber companies and the State of California are actively pursuing completion of habitat conservation plans (HCPs) under Section 10 of the Endangered Species Act on the east side of the Klamath province and in the redwoods. The Bureau of Indian Affairs and the Yakima Indian Nation are developing a harvest management plan for their lands that is intended to be compatible with spotted owls.

In February 1991, the Department of the Interior established a Recovery Team for the northern spotted owl that represents the major Federal and State agencies involved with this issue. The Recovery Team is evaluating critical habitat, the ISC Plan, and all other new and pertinent information; it expected to produce a draft recovery plan in 1992 that outlines the goals and objectives for recovering (i.e., delisting) the northern spotted owl. This plan should help define management prescriptions for critical habitat. The Service will review the scope and extent of this critical habitat rule following completion of the recovery planning process.

Criteria for Identifying Critical Habitat

The maintenance of stable, self-sustaining, and well-distributed populations of northern spotted owls throughout their range is dependent upon habitat quality and its ability to support clusters of successfully reproducing owls that are sufficiently integrated to avoid or reduce demographic and/or genetic problems through time. The biological and physical characteristics of the forest habitat that support nesting, roosting, foraging, and dispersal are essential for this purpose.

The Service's primary objective in designating critical habitat was to identify existing spotted owl habitat and to highlight specific areas where management considerations should be given highest priority to manage habitat. Critical habitat focuses on the nesting and roosting habitat as the most important elements of spotted owl habitat. However, in its designation of critical habitat, the Service has considered all habitat types needed by the owl through its definition of the primary constituent elements.

Using habitat maps, the Service developed criteria to identify which parcels containing these attributes would be included as critical habitat. Because habitat maps available to the Service were generally based on the varying definitions of "suitable habitat" used by the agencies, the major focus was on habitat that provides nesting, roosting, and some foraging attributes. The quality of remaining habitat varies across the owls' range, and so the Service made judgments about the appropriateness of including specific areas. To assist in these determinations, the Service relied upon the following principles (Thomas *et al.* 1990):

—Develop and maintain large contiguous blocks of habitat to support multiple reproducing pairs of owls;
—Minimize fragmentation and edge effect to improve habitat quality;
—Minimize distance to facilitate dispersal among blocks of breeding habitat; and
—Maintain range-wide distribution of habitat to facilitate recovery.

Several qualitative criteria were considered when determining whether to select specific areas as critical habitat. The following discussion describes the criteria and provides an explanation of their use in selecting specific areas. The Service did not establish population goals for individual critical habitat units, provinces, or the range of the owl as part of the selection criteria. It is assumed that these may be identified in the recovery plan, if appropriate.

(1) *Presently suitable habitat emphasized:* The Service concentrated on the existence of presently suitable owl habitat in coniferous and coniferous/mixed-hardwood forests that contained one or more of the primary constituent elements (primarily nesting and roosting, but also foraging and dispersal). The definition of "suitable" habitat was generally equivalent to the structure of Douglas-fir stands 80 or more years of age (with adjustments for local variation or conditions).

(2) *Large contiguous blocks of habitat emphasized:* To respond to the habitat needs of the northern spotted owl, the Service identified large, contiguous blocks of habitat or areas that mostly consisted of owl habitat. To accomplish this the Service began with areas previously designated as Category 1 HCAs (areas with potential to support 20 or more pairs), Category 2 HCAs (areas with potential to support fewer than 20 pairs), and clusters of Category 3 HCAs (single pair HCAs) within its critical habitat designation. Habitat not previously included in HCAs was also was considered for designation where large areas of fairly unfragmented habitat existed outside of an existing HCA. For the most part these areas needed to be of sufficient size to support two or more pairs (based upon the mean home range size for the province) and fall within the spacing recommendations identified in the ISC Plan. In selecting areas for designation as critical habitat the intent was to follow rules similar to those outlined in the ISC Plan on contiguity, shape, habitat quality, spacing, and location within the range. For example, areas were selected so that critical habitat units would be as compact as possible; spider-shaped areas are less valuable for spotted owls because of the large amount of forest edge.

(3) *Quality of existing habitat:* The Service evaluated the quality of existing habitat based on available habitat maps and tried to encompass the best available habitat (i.e., the least fragmented, most contiguous, lower elevation habitat areas) in the critical habitat units. The Service focused on habitat that was within, adjacent to, or in close proximity to an existing HCA; areas with minimal fragmentation were selected over areas with more extensive fragmentation. In carrying out this evaluation, the Service reviewed all available information regarding the habitat quality existing in the HCA's identified by the ISC and made an independent determination regarding the existence of the primary constituent elements essential to the species.

(4) *Dispersal distances minimized:* Designation of critical habitat provides no protection for lands not included in the designation. As a result, the Service made the determination not to violate the spacing guidelines in the ISC Plan. Critical habitat units minimize distance between adjacent units, thereby facilitating dispersal and linkage. In some areas units are nearly contiguous which will help reduce gaps within the

range of the owl, especially in areas of concern (e.g., Bureau lands in the Oregon Coast Range).

(5) *Occupied habitat emphasized:* In selecting critical habitat, the Service gave primary consideration to habitat currently occupied by pairs or resident singles; however, some unoccupied areas were selected if they were important for other reasons (e.g., linkage). All areas selected, however, have potential for supporting owls.

(6) *Maintain rangewide distribution:* The Service designated critical habitat units throughout the existing range of the owl which will help maintain the variation that occurs over its range. In some cases, the only constituent habitat element currently supported by these areas is dispersal habitat. These areas should provide sites where owls moving across the landscape can find shelter and prey and should eventually provide nesting habitat as well. To be truly successful as stepping stones to improve linkage, these areas must in the future provide nesting habitat to support an adequate distribution of owls. For example, relatively few owls remain in the area between the Olympic Peninsula of Washington, east to the Washington Cascades, or south to the Siuslaw National Forest of Oregon; however, linkage within this area is essential to the recovery of the subspecies and to maintain a population in the Olympic Peninsula.

(7) *Need for special management or protection:* The Service evaluated the need for special management because of the existing situation (e.g., current quality of existing habitat), low population density, or connectivity problems (e.g., areas of concern). Although most critical habitat units were designated based upon the presence of existing habitat, some were selected because of their need for special management or protection. Primary emphasis was given to areas of concern (as identified in the ISC Plan and the Service's status reviews) that require special management. Emphasis was also given to the contribution that area would make to the conservation of the owl.

(8) *Adequacy of existing regulatory mechanisms:* The Service considered the existing legal status of areas (i.e., whether areas were already protected for other reasons such as wilderness or parks) and did not formally designate protected areas as critical habitat. Some HCAs or portions of HCAs were not included in this rule because they were already protected in wilderness, State parks, or National Parks and Monuments. The Service also considered the value of other processes (e.g., the HCP process currently underway in California) and the ability of those processes to provide owl habitat.

Results of Applying the Selection Criteria

Application of these criteria resulted in the consideration of a number of items that are explained below. A full discussion of the items that were considered for each individual critical habitat unit is included in the Service's narratives (USFWS 1991d; a copy is contained in the Service's administrative record for this rule).

Habitat Conservation Areas

HCAs are only one part of a plan to manage spotted owls. The areas selected as HCAs were identified by experts familiar with the species and its habitat, were identified through application of accepted ecological principles, and are currently considered essential to the conservation of the species. The ISC Plan was based upon the best information available at that time on spotted owls. The ISC Plan represents the best science on the conservation of the northern spotted owl, is consistent with ecological principles, and has been thoroughly peer-reviewed. The success of the ISC Plan or other acceptable conservation plans in recovery will depend upon the time of implementation and the long-term protection of the recommended network combined with management to maintain dispersal habitat in the remaining forest matrix (e.g., 50–11–40 rule).

The Service thoroughly reviewed the ISC Plan, strongly endorses the science and principles espoused by this plan, and has used the ISC Plan in other conservation efforts (e.g., it has been the focus in Section 7 consultations). The Service believes there is a greater opportunity in the near term for conserving owls on lands identified as HCAs. Therefore, HCAs form the basis for critical habitat and were selected as the starting point for designation of critical habitat.

By using the HCAs as the basis for critical habitat, the Service accepted the fact that critical habitat would primarily apply to those Federal and State lands where HCAs had been recommended by the ISC. This resulted in the initial proposed selection of critical habitat primarily on Federal lands and some State lands in key areas, which would place a greater emphasis on the need for Federal and State land managers to participate in efforts to conserve the northern spotted owl.

The HCAs were accepted by the Service, as recommended by the ISC, except where new information (e.g., updated suitable habitat maps) indicated that areas of poor-quality habitat had been included in an HCA and/or higher quality habitat was located immediately adjacent to an HCA. Because it was constructing a management plan, the ISC did not include all good owl habitat in HCAs. In some cases, better habitat was found outside of an existing HCA that had not been previously identified by the ISC. Portions of HCAs were not included in critical habitat if (1) unsuitable areas were identifiable on available maps, (2) there was suitable habitat adjacent to the HCA that could be included in the critical habitat unit, and (3) exclusion of the unsuitable habitat would not violate the size and spacing recommendations. Where possible these areas were exchanged for areas of better quality habitat currently adjacent to the HCA.

About 5.7 million acres (5.2 million Federal) currently included in the HCA system were proposed as critical habitat because they met the criteria for designation. Over 200,000 acres of non-reserved lands in HCAs were not included in critical habitat since they did not meet the criteria; all reserved lands were also excluded because they were already protected (about 2.1 million acres). Some owl habitat outside HCAs and currently managed under the 50–11–40 Rule was included in critical habitat because it met the designation criteria.

Increase in Size Above Non-Reserved HCA Acreage

Designation of critical habitat does not accomplish the same goals or have as dramatic an effect upon owl conservation as does the ISC Plan, because critical habitat does not apply a management prescription to designated areas, nor does it affect the forest matrix outside of critical habitat (estimated as an additional 12–15 million acres). Since critical habitat designation is not a management plan, there was not a limitation on the size of the area added to any HCA, although emphasis was placed on areas documented to support the pair targets identified in the ISC Plan.

Primary consideration was given to existing suitable habitat and known pairs of spotted owls, particularly where the Service felt that additional protection should be considered and would enhance the existing HCA. For example, suitable nesting habitat, usually supporting known owl pairs, was included along with adjacent HCAs

primarily to provide near-term population stability for the spotted owl to help reduce the near-term risk associated with the ISC Plan. Such adjustments may shorten the recovery period by increasing habitat protection around existing HCAs that are deficient in suitable habitat or numbers of pairs. The inclusion of areas adjacent to HCAs included additional pairs of owls and resident singles that may help meet the pair targets identified in the ISC Plan in the near-term. However, the focus was on habitat quality and not on population numbers.

The Service focused on the existing situation in each of the physiographic provinces. Variations within and among provinces (e.g., existing habitat quality and quantity, distribution of existing suitable habitat, low numbers of pairs) led to differences in application of the criteria. Habitat was included in the designation to help specify areas of importance (e.g., to improve connectivity in areas of concern, to highlight areas for land exchanges, to ensure good distribution over the species' range, etc.). The Service identified areas of concern where habitat linkage within and among physiographic provinces is at risk due to past management practices. These areas are frequently associated with interspersed (checkerboard) Federal and non-Federal landownership patterns.

The Service evaluated different ways to approach critical habitat in these areas of concern. In the initial May 6, 1991, proposed rule, the Service identified the entire areas of concern as critical habitat to provide additional protection for key movement corridors. In response to public comments, the Service reevaluated this approach in the August 13, 1991, revised proposal primarily because owls appear to disperse randomly, not along well-defined corridors, and there are unanswered questions about the biological effectiveness of movement corridors. In the August proposal the Service included both the HCAs and adjacent blocks of existing suitable habitat within critical habitat. This not only focused on the immediate need for suitable habitat blocks in the areas of concern, but also resulted in closer blocks of habitat that facilitate movement of owls among critical habitat units and throughout their range. The need to protect linkage throughout the owl's range will increase if habitat conditions (quality and/or quantity) continue to decline. The size of critical habitat units in these areas is somewhat misleading since in areas under checkerboard ownership (in particular Bureau lands) only about half of the area may actually be included in critical habitat.

Although the designation of critical habitat emphasizes the importance of maintaining suitable habitat for all four constituent habitat elements, nesting and roosting habitat should be emphasized to improve opportunities for successful linkage. For example, in the Oregon Coast Ranges province, additional areas were identified as critical habitat due to the extremely fragmented habitat conditions and low owl pair numbers. New areas were identified within the Shasta/McCloud area of California where the Service determined that existing HCAs, although important to the owl, did not contain the most suitable habitat. In the southern portion of the Washington Cascades, areas of suitable habitat were included within critical habitat because large portions of the habitat within the HCAs are presently unsuitable and were deleted. Regardless of the existing variation, all of these areas play an important role in maintaining a stable owl population over its range.

Adjustments to Legally-Described Boundaries

The Act requires the Service to specifically identify and describe areas designated as critical habitat. This process previously has been accomplished by publishing illustrative maps and detailed written legal descriptions. To facilitate legal definition, in the August proposal all critical habitat unit boundaries were described to adjacent section lines external to the unit (including HCAs), unless other legally definable boundaries were available. In all cases the decision to use a section line was dependent on the existence of known owl habitat within the selected boundary that met the criteria.

In adjusting the ISC's HCA boundaries to the nearest section lines, the Service made the decision to include a section depending upon the amount and quality of habitat within that section; these additions provided a biological buffer to the HCAs. In some cases when a small portion of an HCA (e.g., 100 acres) crossed the corner of a section, but contained little to no existing owl habitat, the section was not included in critical habitat.

Lands Outside of Critical Habitat

Not all suitable nesting and roosting habitat was included in critical habitat. The Service recognizes the importance of all lands, but did not incorporate all habitat, especially all dispersal habitat, within critical habitat units, primarily because most of these lands did not meet the designation criteria. It was impractical to include all dispersal habitat within critical habitat, since relatively little is known about this aspect of the owls' life history. Emphasis was placed on those areas requiring more immediate protection due to habitat conditions within the critical habitat units, provinces, or in relation to the need for range-wide distribution. This does not mean that lands outside of critical habitat do not play an important role in the owls' conservation. These lands are also important to providing nesting, roosting, foraging, and dispersal habitat for owls.

In order to achieve recovery, habitat must be available for owls to move throughout their range to provide genetic and demographic exchange among subpopulations, to recolonize formerly occupied portions of the subspecies' range (linkage), and for juvenile owls to disperse from their natal areas (dispersal). All of these functions require that forested habitat exist between protected areas to provide connectivity. Dispersal habitat must provide protection to owls from avian predators, provide at least minimal foraging opportunities, and allow juvenile and adult owls to move successfully among blocks of nesting habitat. Because owls disperse and move randomly, and given general harvest practices, the ISC suggested that the general forest landscape on Federal lands should be maintained in a condition that would allow successful owl movement between HCAs and other protected areas, through utilization of the 50–11–40 rule (Thomas *et al.* 1990). The 50–11–40 rule also was recommended for non-Federal lands, but on a voluntary basis.

However, the ISC Plan affects a much greater amount of acreage in the forest matrix beyond those lands designated as HCAs through application of the 50–11–40 rule (estimated to apply to an additional 12 to 15 million acres). The 50–11–40 rule applies to significant acreage that is not included in critical habitat. The Service expects that the dispersal needs of the owl will be addressed through Federal compliance with the 50–11–40 rule or other scientifically acceptable approaches. Although the Service assumes that the 50–11–40 rule or an equivalent rule will be followed in this portion of the forest matrix after designation of critical habitat, there is no assurance that this will occur. Even though distances between critical habitat units were often less than between HCAs (which should facilitate linkage), these shorter distances do not replace the need to

manage the forest matrix not included in critical habitat.

Wilderness, Parks, and Other Reserved Areas

The current classification of wilderness areas and parks provides adequate protection against potential habitat-altering activities, because they are primarily managed as natural ecosystems. The Service considered their relative contribution to the owls' conservation but did not include them in critical habitat because of their current classification. These lands are certainly essential to the conservation of the species as they provide important links and contain large areas of contiguous habitat not previously harvested. However, these lands, by themselves, do not provide adequate habitat for supporting a viable spotted owl population.

Reserved areas do not provide a well-distributed network of owl preserves because they are concentrated within only about one-third of the owl's range. They usually have poor soil conditions or are too steep or rocky; such areas generally do not contain suitable habitat for spotted owls. Owl density and reproductive success within these areas is generally less than in other areas (Thomas *et al.* 1990). Although these lands may contain some high-quality, lower-elevation habitat that is important for the species, they generally include a large percentage of high-elevation, alpine habitat that is unsuitable or only marginally suitable for spotted owls. Furthermore these areas are often separated by wide gaps of 30 to 80 miles. Without intervening populations, these protected areas may become demographically isolated.

Congressionally-designated wilderness and national and state park systems contain less than 2.1 million acres of suitable habitat (about 23 percent of the total amount of owl habitat rangewide) and may support fewer than 300 pairs of owls (Thomas *et al.* 1990). There are 55 wilderness areas totaling over 4.7 million acres in the 18 national forests in the owls' range; there is very little wilderness on Bureau lands in these areas (USDI 1990a). It is estimated that less than 25 percent of wilderness lands (about 1.3 million acres of the 4.7 total) provide suitable nesting and roosting habitat; about 15% of the total amount of nesting and roosting habitat estimated for all lands. Most of that habitat is highly fragmented by intervening areas of high elevation. National Parks may provide about 600,000 acres of suitable owl habitat. Most existing owl habitat currently on Park lands is found in the Olympic National Park (about 16 percent of all known suitable habitat within reserved areas).

In addition, there are areas which are reserved administratively at the local level for hydrological, scenic, biological, or other reasons. Total acreage estimates were not available, but these areas are believed to comprise about 20–30 percent of the habitat currently identified as being in the timber base. For the most part these areas are small and of low or poor quality habitat that may only suffice for limited nesting or for dispersal. Since these latter areas could not be readily identified on habitat maps, some were included in critical habitat if they met the selection criteria.

Management Planning

The Service's intent in designating critical habitat for the northern spotted owls is to provide protection for habitat that contains constituent habitat elements in sufficient quantities and quality to maintain a stable population of owls throughout the owl's range. The emphasis for future management will be on maintaining or developing habitat that has the characteristics of suitable nesting and roosting habitat and to avoid or reduce the adverse effects of current management practices.

Although critical habitat is not a management plan, the areas selected for inclusion are interlinked and play a role in maintaining a stable and well-distributed population of owls. Identification of these areas concluded the first step in the designation of critical habitat for the northern spotted owl. This step was primarily the focus of the August 13, 1991, proposal to designate critical habitat. Final modifications to this proposal resulted from the economic analysis and consideration of the exclusion process, and led to the final designation of critical habitat (see following sections for final designation).

Economic Summary of August 13 Proposal

Section 4 of the Act directs the Secretary to designate critical habitat and to consider economic and other relevant impacts in determining whether to exclude any proposed areas from the final designation of critical habitat. The Secretary has delegated these authorities to the Director of the Service. Section 4(b)(2) states:

> The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

The Service analyzed the economic effects of the August 13, 1991, revised proposal to designate critical habitat (USFWS 1991d). A summary of that analysis was provided in the proposed rule (56 FR 40001); the complete analysis can be found in the draft economic analysis report. That analysis examined how designation of critical habitat was expected to affect the use of Federal lands or State or private activities with some Federal involvement, and the economic costs or benefits which would ensue in the Northwest. These were the regional economic effects of the proposed designation that were over and above those expected to result from previous actions (e.g., the ISC Plan), including the listing of the owl as threatened. The economic analysis assumed those values which were in place prior to critical habitat designation (e.g., the ISC Plan and final Forest Service and Bureau plans, section 7 jeopardy standard, and section 9 prohibitions) as the baseline for this analysis. As a result, critical habitat effects were those incremental impacts that would occur solely as a result of the critical habitat proposal above and beyond the effects of these other actions.

The proposed critical habitat covered a broad geographic area in three States and included both Federal and State-owned lands. Because the designation would affect only Federal agency actions under section 7 of the Act and only to those areas currently outside of HCAs, it was assumed that any ensuing economic impacts of the designation would occur only on Federal lands or on non-Federal lands where there was Federal involvement. The Service concluded that the impacts on Federal lands would be largely limited to timber harvest and to a lesser degree non-timber activities that may affect owl habitat. The Service had excluded all private and tribal lands in the August 13 proposal to help reduce the overall impacts (about 3.1 million acres). The Service believed that the benefits from inclusion of these areas in critical habitat did not outweigh the potential costs resulting from their inclusion (see following discussion on the exclusion process) and that there were other

mechanisms underway in some areas (e.g., HCPs) that would provide greater conservation benefits.

As a result of that analysis, the Service concluded that the August 13 proposal would have the potential to reduce timber harvest by about 167 million board feet (mmbf) with the net loss to the U.S. Treasury of about $43 million. The potential reduction in timber-based employment was estimated at 2,458 jobs (1,538 direct jobs; 920 indirect jobs) with an estimated $20 million reduction in payments to counties. These figures represented about a 4–5 percent impact on the timber industry in the Northwest. It was estimated that Oregon would be the most affected by the proposal. The relative importance of the industry also varies by county with some counties much more dependent on the timber industry than others. These counties would be expected to be more affected by the designation than others that are more diversified. The Service expects a number of factors to partially offset employment and other losses over time, such as changes in stumpage prices or improvements in silviculture techniques, but it was difficult to quantify these estimates.

The Service also concluded that the conservation of the spotted owl and its habitat through designation of critical habitat would result in a wide range of benefits, including recreation values, watershed protection, and others, as well as the values that society places on conservation of the owl and its ecosystem. However, it was not possible to place dollar estimates on these values.

As a result of this analysis, the Service concluded that the overall effects on the Northwest timber industry and to some counties in particular, were potentially severe and that further consideration should be given to excluding additional acreage from the final designation to reduce the overall economic impacts that may result from the designation of critical habitat.

Summary of the Exclusion Process

To determine whether or not to exclude areas from the designation of critical habitat pursuant to Section 4(b)(2) of the Act requires determinations of (1) the benefits of excluding an area as critical habitat, (2) the benefits of including an area, and (3) the cumulative effects of exclusions on the probability of species extinction. This process consists of estimating the benefits of retaining or excluding critical habitat units, weighing those benefits, and determining if exclusion of an area or areas will lead to the extinction of the species. If the exclusion of an area or areas from critical habitat will result in eventual species extinction, then the exclusion would be prohibited under the Act. A full discussion of this process and its conclusions can be found in the Service's report on the exclusion process (USDI 1991b).

Extinction

Critical habitat consists of areas with habitat characteristics that are essential to the conservation of a listed species. However, the exclusion process focuses upon a threshold for species extinction. Conservation (recovery) and extinction are separate standards. Recovery and extinction are at opposite ends of a continuum, with the likelihood of a species' continued survival increasing the closer the species is to the recovery end of the continuum. It may be more difficult to predict the point at which extinction would be inevitable than to determine where recovery may occur.

Each such determination may be different for different species and may vary over the range of a species. It may be related to a number of factors, such as the number of individuals, amount of habitat, condition of the habitat, and reproductive success. Extinction of a wide ranging species such as the northern spotted owl would most likely occur as a result of increased fragmentation of its habitat (affecting quality) and range, and isolation of subpopulations (affecting population stability). Portions of its range would no longer support owls before the species would become extinct. Cumulatively, reductions in range would inevitably lead to the species extinction. The focus of the analysis was on those factors that pertain to these issues and included consideration of the condition and location of habitat, area by area.

Criteria and Decision

The Act specifically prohibits consideration of economic effects when listing species as threatened or endangered, but requires an analysis of the economic and other relevant impacts of designating critical habitat. Therefore, economic costs and benefits of critical habitat designation were defined as the economic effects which: (1) Exceed those that resulted from listing the northern spotted owl as a threatened species in June 1990; (2) are above those economic effects resulting from the previous implementation of owl protection measures by the Forest Service and Bureau (e.g., the ISC Plan); and (3) are beyond limitations that may have been imposed by other statutes, regulations, or court actions. Consideration of those acres available for exclusion was, therefore, limited to those areas proposed for critical habitat but currently outside of HCAs as defined in the August 13 proposal.

The Service used the following process to evaluate the designation of critical habitat to determine whether to exclude areas because of concerns over economic effects:

—Areas were identified that are essential to the conservation of the species based upon the criteria described in this document;
—An economic analysis was conducted to ascertain the anticipated economic consequences of designating areas as critical habitat, using the county as the basic level of economic analysis;
—Economic criteria were developed to help identify areas of vulnerability and to identify areas which would be affected by the critical habitat designation. The analysis was done at the county level because the county level is the lowest level for which national economic data are compiled. However, consideration was also given at the agency, national, and province level to help clarify impacts and to provide comparable measurements; and
—Economic thresholds were established and all counties were screened against the criteria to identify their economic vulnerability. Those with the greatest vulnerability or highest overall impacts were identified for additional review and discussion.

The Service determined that criteria based upon the effect on timber and timber-related employment would be used to help determine when a county should be reviewed because of the effects of the designation of critical habitat. Two initial criteria were selected to determine an economic threshold: (1) If the projected number of timber jobs expected to be lost exceeded 3 percent of the total number of timber jobs in that county, and (2) If the effect of the designation resulted in a projected loss to county budget of 5 percent or more. After reviewing these criteria, the Service chose to reduce the criteria for projected employment reductions to 2 percent. The Service believes that impacts of this magnitude present a significant loss to local economies. These percentages are equivalent to the indicators that the Federal government uses to identify economic concerns.

The Service believes that when losses in revenues reach as high as 5 percent or more of previous budget levels, significant reductions may occur in county services. The Service adapted

the criteria for "substantial and persistent unemployment" effects set forth in the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies" (March 1983). The threshold for a substantial effect (i.e., a current unemployment rate of at least 6 percent and an annual average unemployment rate 50 percent above the national level) was modified to reflect the future effect on currently employed workers in the three State area. The county level unemployment rate was used in place of the national level rate, and the "50 percent above" criteria was defined as future unemployment effects that would be potentially created by critical habitat designation. This process resulted in a 3 percent unemployment threshold for timber related employment. In order to account for uncertainty and to develop a more conservative estimate, the Service reduced the unemployment threshold to 2 percent.

After completing its economic analysis and considering other factors that may be pertinent to any decision to exclude areas from designation as critical habitat, the Service made the following decisions:

(1) A total of 865,000 acres were excluded from designation. These acres were excluded from:

—13 counties where the Service determined that the benefits of exclusion outweighed the benefits of inclusion and that the economic costs needed to be mitigated to reduce the number of timber-related jobs projected to be lost locally, and/or where losses to county revenues exceeded the threshold; and

—Most counties to help reduce the overall economic costs over the owls' range where acres had been included primarily to expand critical habitat units incorporating HCAs to meet section lines for use in legal descriptions.

(2) All presently existing projects and all proposed projects where all Federal, State, and local permitting processes had been completed and final approvals and permits issued as of the date of the final rule were excluded from designation to help reduce any impacts from additional regulatory burden (e.g., existing mines, ski areas, etc.); future project changes are not included in the decision.

(3) All State lands (about 580,000 acres) are excluded because the potential costs resulting from a designation outweighed the minor conservation benefits expected to result from protection under the Act applicable to critical habitat on State lands.

The Service has removed (1) the areas added to HCAs to facilitate legal descriptions, (2) additional areas within specific counties, (3) existing projects, and (4) State lands, on the ground that the benefits of excluding such areas from designation outweigh the benefits of including them within critical habitat. This resulted in an exclusion of nearly 37 percent of the acres proposed for critical habitat that were above the HCA acreage included in critical habitat, plus nearly 600,000 acres of State lands. Those exclusions will reduce the economic and other relevant impacts expected from this designation. The above decisions to exclude areas from critical habitat are in addition to the reductions and exclusions reported in the August 13 proposed rule. In that proposal, the Service excluded private and tribal lands (3.1 million acres estimated); some State and Federal lands that did not meet the designation criteria also were deleted prior to completion of the August 13 proposal (about 200,000 acres net).

Although the Service believes all lands are important to the recovery of the northern spotted owl, it did not include the above lands because it felt that the conservation benefits to be gained from including them in critical habitat did not outweigh the potential costs to the public. The Service believed that the above actions were justified because in comparison there are very few owls or owl habitat currently on non-Federal lands, except in the redwoods in northern California. For the most part the best remaining owl habitat exists on Federal lands throughout the range of the owl. Because of this situation most conservation activities for the owl are expected to be carried out by the Federal agencies (particularly the Forest Service and Bureau). Non-Federal land management actions are not subject to section 7 consultation unless Federal approval or authorization is required. Since there is little direct opportunity to apply additional protection to critical habitat through section 7 on non-Federal lands, the Service made the decision to exclude these areas because of the potential economic concerns and because their designation would provide little additional conservation benefit to the owl. The Service believed that there are other mechanisms on private, State, and tribal lands that would provide a greater conservation benefit for the spotted owl than that provided under designation (e.g. the HCP process underway in California). The areas that were excluded from the designation were those the Service believed would have the least biological impact on the intent of the designation for this species.

In the August 13 proposal, the Service also excluded all sold and awarded timber sales as of the date of that proposal. The potential market value of these sales is over $1 billion (T. Rogan, Head of Engineering, Forest Service, pers. comm.; B. Neitro, Threatened and Endangered Species Coordinator, Bureau of Land Management, pers. comm). The Service believes that the cost of buying back those sales or causing further regulatory burden as a result of designation justified their exclusion.

A comparison of the major effects of designating critical habitat between the August 13 proposal (56 FR 40001, USFWS 1991d) and the final designation (see ECONOMIC IMPACTS OF THE FINAL DESIGNATION in this document and USDI 1991a) shows that the exclusion process resulted in significant reductions in potential economic impacts resulting from the designation. The final rule results in an increase in annual timber volume of 65 mmbf over the August proposal. The increased availability of timber in the final rule, valued at $4 million annually, may result in 1,038 more jobs than the August proposal and may reduce the loss of payments to the States by $1.8 million annually. These reductions in economic effects are due primarily to the reduction in acres of Federal land designated as critical habitat, although some small reductions are also attributed to the use of updated job coeffecients and to the use of slightly different timber yield per acre figures.

The above exclusions increase the importance of the remaining critical habitat and associated consultation processes to the conservation of the owl and place a greater dependence on other processes for recovery. The exclusions may reduce the biological buffer in some areas, thus reducing the Service's flexibility under section 7. Deleting or dropping areas from the designation also changes the value of the remaining units, thereby affecting how these areas should be reviewed under section 7. Additionally, potential population losses in the range of the owl may occur because of linkage problems, particularly on the Olympic Peninsula and in southwest Washington and northwest Oregon. However, the Service has considered the cumulative effect of these decisions, and has concluded that they will not result in the extinction of the northern spotted owl over its range.

Exclusion of these areas or activities from critical habitat applies only to the potential protection provided under

section 7 consultation (adverse modification) for critical habitat. Excluded lands and projects are still subject to the other prohibitions mandated by the Act, such as section 7 consultation (jeopardy) and section 9 (take).

Conclusion

The Service has reviewed the overall proposal to designate critical habitat and the benefits and costs associated with designating critical habitat for the northern spotted owl. The Service has determined that the overall conservation and other benefits to be gained from the designation outweigh the benefits from excluding additional areas and, therefore, has made a final determination to designate critical habitat for the northern spotted owl. A full discussion of the economic analysis (USDI 1991a) and exclusion process (USDI 1991b) are included in the Service's administrative record.

Effects of the Designation

The revised proposed rule for the designation of critical habitat for the northern spotted owl published on August 13, 1991, identified 181 areas encompassing a total of approximately 8.2 million acres. It included 61 critical habitat units totaling 1.8 million acres in California, 77 units totaling about 3.8 million acres in Oregon, and 43 units totaling 2.7 million acres in Washington. This included 6.4 million acres of Forest Service land, 1.2 million acres of Bureau land, 580,000 acres of State land, and approximately 62,000 acres of military lands.

In applying the exclusion process to the areas included in the August proposal, the Service reviewed habitat maps to identify specific areas for deletion. Areas that had been added (to HCAs) solely to facilitate identification of legal descriptions were deleted except where there was a clear conservation benefit to the owl, e.g., areas were retained if they were part of a larger area recommended as critical habitat. In the counties where the Service decided to exclude an additional specific number of acres, the Service used public comments and available habitat information to select which areas to exclude from the designation. As much as possible, the Service selected areas so that the remaining areas included in the final designation did not violate the intent of the designation criteria (e.g., spacing, unit contiguity). To do this the Service chose to remove areas bordering critical habitat units and in areas where spacing between units would not be significantly affected. The final maps reflect these changes. The number of areas and total acreage involved in the final product are discussed below. Table 1 provides a summary of the acreage changes that have occurred from the May 6 proposal through the final designation.

TABLE 1.—SUMMARY OF ACRE REDUCTIONS BETWEEN ORIGINAL MAY 6 PROPOSAL, AUGUST 13 REVISED PROPOSAL, AND FINAL CRITICAL HABITAT DESIGNATION [1]

	May to August	August to December	Total acre reduction
Forest Service	[2] −12,000	−778,000	−790,000
BLM	[2] −146,000	−86,000	−232,000
State	[2] −30,000	−582,000	−612,000
Tribal	−74,000		−74,000
Military	[2] −19,000	−4,000	−23,000
Private	−3,020,000		−3,020,000
Total	−3,301,000	[3] −1,450,000	−4,751,000

[1] See Table 3 for comparison with the total number of acres proposed and designated as critical habitat.

[2] These acres were deleted because they did not meet the designation criteria.

[3] This is about 37 percent of the number of acres proposed (August 13 proposal) for critical habitat that were outside of HCAs, a reduction of 62 percent from the May 6 proposal (when combined with the 3.3 million previously excluded).

Total Acres Included in Critical Habitat

As a result of the exclusion process, the Service is designating approximately 1.4 million acres less than proposed in the August 13, 1991, rule and 4.7 million less than the original May 6, 1991, proposal. The final rule for the designation of critical habitat for the northern spotted owl identifies 190 areas, encompassing a total of nearly 6.9 million acres; this is about 84 percent of the total acres included in the August proposal and 62 percent of the total originally identified in the May 6 proposal. The total number of final designated units is more than the number of units proposed in the August 13 proposal because some were subdivided into separate units as a result of the exclusion process. The Service has designated 61 units totaling 1.4 million acres in California, 76 units totaling 3.2 million acres in Oregon, and 53 units totaling 2.2 million acres in Washington. The final designation encompasses approximately 5.7 million acres of Forest Service land, 1.2 million acres of Bureau land, and 58,000 acres of military land (see Table 2).

TABLE 2.—APPROXIMATE ACREAGE [1] OF FINAL CRITICAL HABITAT UNITS (CHUS) FOR THE NORTHERN SPOTTED OWL (ROUNDED TO THE NEAREST THOUSAND ACRES)

	California	Oregon	Washington	Total
Forest Service	1,301,000	2,211,000	2,163,000	5,675,000
Bureau of Land Management	108,000	1,046,000		1,154,000
Military	0	0	58,000	58,000
Total	1,409,000	3,257,000	2,221,000	6,887,000
Number of CHUs	61	76	53	190

[1] Acreage figures include only Federal lands.

Of the approximately 6.9 million acres, 20 percent is in California, 47 percent in Oregon, and 32 percent in Washington. These percentages are similar to the current distribution of nesting and roosting habitat located on public lands in these three States. Ownership is similarly distributed among Federal agencies with Forest Service lands comprising about 82 percent of critical habitat. The percentages of critical habitat administered by each land managing agency is similar to the percentage of total suitable nesting and roosting habitat currently administered by each agency.

State, private, tribal, and other non-Federal lands are not designated as critical habitat even if they are physically situated within the boundaries of critical habitat units. Acreage totals for any State, private, tribal, or other non-Federal lands that are interspersed within the critical habitat units were not included in the totals if the areas were large enough (e.g., ≥20 acres) to be identified through the geographic information system (GIS). This is particularly important in checkerboarded areas (e.g., Bureau lands) where the visual size of a critical habitat unit is misleading since only about half of the area is actually designated as critical habitat.

Some small areas of naturally-occurring non-habitat (i.e., areas that have never been nor will likely ever be owl habitat, such as lava flows, alpine areas, poor timber sites, airports, roads, parking lots, and water bodies) were included within the physical boundaries of critical habitat. Although they may be located physically within the boundaries of a unit, these areas are not affected by the designation because they will never contain the constituent elements. To the extent possible these areas were either directly deleted from critical habitat or identified as areas that would not be subject to any regulatory mechanisms governing critical habitat. If these areas were found along the periphery of critical habitat units, boundaries were drawn to physically exclude them from the final maps. This was not possible for areas imbedded within individual units. Acreage totals were adjusted where possible to reflect their exclusion. However, in some cases it was not possible using the GIS to physically remove these acres from the total acreage figures; they should not make a significant difference in actual total acres, although the total acreage figures may be slightly overestimated. Projects and timber sales that were excluded as a result of the exclusion process were also not mapped; their exclusion will be handled through the normal consultation process.

Comparison With Previous Actions

Comparison of the maps that have been developed over the past few years underscores the limitations that exist in trying to identify habitat to be protected or conserved for this or other forest species. There is a limited remaining habitat base; all land management planning exercises must focus on this same habitat base. For example, the Scientific Panel focused on HCAs to ensure that owls were adequately protected in any potential late successional forest reserve system that would also address other forest species and processes. The ISC, critical habitat designation, and the Forest Service's recent draft EIS (USDA 1991a) also used the same basic information, as will the Recovery Team. All of these proposals, although created to meet different goals, are based on a habitat base that is diminishing over time. The size of areas included in these different processes reflect differences between the purposes for the respective exercises and are not directly comparable. However, critical habitat is compatible with these planning efforts, since management prescriptions that may be recommended can be applied to critical habitat.

Table 3 provides acreage totals from the ISC, the Service's May 6 and August 13 proposals, and this final determination (the late successional information was not included although critical habitat is similar to alternatives 6 and 8). The Service updated all landownership data for the three States and entered these data into the GIS. The HCA information that was entered into the GIS was the most recent version used by the agencies and provided through the Scientific Panel, although boundaries were not exactly the same as the HCAs originally proposed by the ISC and are different than some maps currently being used by the Forest Service's EIS team.

TABLE 3.—COMPARISON OF TOTAL ACREAGE FOR THE ISC HABITAT CONSERVATION AREAS (HCAS), MAY 6 PROPOSED CRITICAL HABITAT AREAS (CHAS), AUGUST 13 REVISED CRITICAL HABITAT UNITS (CHUS), AND FINAL CRITICAL HABITAT UNITS (FIGURES ARE APPROXIMATE AND ARE ROUNDED TO THE NEAREST THOUSAND)

	ISC HCA [1] acres		May 6 CHA acres	August 13 CHU acres	Final CHU acres
	Categories				
	1&2	3			
Forest Service	5,356,000	427,000	6,465,000	6,453,000	5,675,000
Bureau of Land Management	859,000	106,000	1,386,000	1,241,000	1,154,000
National Park Service	652,000	NA	NA[2]	NA[2]	NA[2]
State	661,000	NA	612,000	582,000	0
Military	72,000	NA	81,000	62,000	58,000
Private	0	NA	3,020,000	0	0
Tribal	0	NA	74,000	0	0
Subtotals	7,600,000	533,000			
Totals	8,133,000[3]		11,638,000	8,337,000	6,887,000
Number of Areas	193	unk.[4]	190	181	190

[1] Category 1 and 2 HCAs from ISC Plan; includes wilderness and National Park acreage (about 2.1 million acres); Category 3 HCAs were mapped independently by agencies and not previously included in HCA totals. All data derived from the GIS.
[2] Acreage for National Park Service lands (and other lands already in protected status) are not included in critical habitat.
[3] About 5.2 million acres of HCAs are included within critical habitat.
[4] Category 3 HCAs were recommended by the ISC only on Bureau and Forest Service lands in areas where the owl situation was most precarious; this included nearly 100 different areas (the actual total number was not available).

HCA and critical habitat acreage totals are not directly comparable. HCAs contain acreage of reserved areas (wilderness and parks) that are not designated as critical habitat because they are already protected and HCAs are only applicable when placed in the context of the total ISC plan (with 50–11–40). HCA estimates include nearly 2.1 million acres (approximately 25 percent of the total acres) of reserved lands (wilderness and parks). Subtracting these 2.1 million acres from the HCA totals leaves about 6.0 million acres of nonreserved acres remaining in the HCA system. The 6.0 figure contains the acreage of Category 3 HCAs; Category 3 HCAs represent 533,000 acres that was

not included in previous estimates of the total amount of acres affected by the ISC Plan.

Final critical habitat designation includes about 6.9 million acres of non-reserved areas, a difference from the HCA network of nearly 900,000 acres when all lands are considered. This is less than a 13 percent difference in total acres between HCAs and critical habitat, thus imposing restrictions on about 13 percent more acreage than those affected by HCAs. HCAs also include acres of State and military lands; military lands are not managed primarily for timber harvest. Comparing only Forest Service and Bureau lands results in a difference between HCAs and critical habitat on these lands of about 1.6 million acres. The apportionment of acres for HCAs and critical habitat is similar for Federal land managers and reflects the differences in total acreage managed by these agencies.

The ISC (Thomas *et al.* 1990) estimated, based on agency data, that about 20–30 percent of the acres outside of wilderness and parks were reserved locally (e.g., streamside or scenic corridors), areas unsuitable for timber harvest (e.g., unstable soils), or set aside for other reasons (e.g., bald eagle nest sites); these designations can also be changed locally and are not expected to always be so designated. The actual data were not available to the Service. However, using these percentages indicates that of the 6.0 million acres (in HCAs outside of wilderness or parks) or the 6.9 million in critical habitat, about 4.2–4.8 million acres (HCAs) or 4.8–5.5 million (critical habitat) of the total acres included in these two different designations respectively may actually be on lands available for timber harvest.

In addition, the above HCA estimate also does not contain acres managed under the 50–11–40 rule. Although no one has fully compiled these figures, it is estimated that they would cover up to 12 to 15 million acres of the existing forest base within the range of the owl that are above the amount in the HCAs. Critical habitat does not include management prescriptions for forested lands not included in the designation.

Owls and Acres of Nesting and Roosting Habitat

To help place the acreage totals (from the above tables) in perspective, the Service updated the estimates previously identified in the ISC Plan and the Service's 1990 status review. The majority of owls and suitable spotted owl habitat (i.e., for nesting, roosting, and some foraging) are found on Federal lands, primarily on Forest Service land (about 70 percent). A large percentage are also located on Bureau lands in Oregon (about 12 percent). In some cases the quality of owl habitat in areas included within critical habitat but outside of existing HCAs is better than the habitat within HCAs, although all designated lands met the criteria for critical habitat.

There are no current estimates of the amount of additional habitat that contributes to dispersal (e.g., that currently would be managed under the 50–11–40 rule on Federal lands); some of these lands are included within critical habitat because they are interspersed with nesting and roosting habitat, but the majority of these lands were not designated as critical habitat.

In the August 13 proposal (56 FR 40001) the Service provided a comparison of the estimated amount of nesting and roosting habitat and owl pairs currently located within the HCAs and critical habitat units to the total known number of pairs and estimates of nesting and roosting habitat throughout the range of the owl; these numbers were updated through the summer of 1991. Additional protection was proposed for about 60 percent (3.2 million acres) of the total estimated amount of suitable nesting and roosting habitat on Federal lands that is outside of existing reserved systems. In comparison the HCA network included about 32 percent of suitable habitat outside of reserved areas on Federal lands; these totals include estimates of suitable habitat for category 3 HCAs.

The Service did not fully reanalyze these data to determine the actual amount of suitable habitat that remains within the designated areas after completion of the exclusion process. However, based on a review of habitat maps, it is believed that the percentage of suitable habitat excluded from the designation is in proportion to the percentage of total acres excluded. Therefore, the total amount of suitable habitat remaining is approximately 83 percent (or 2.6 million acres) of the amount included in the August 13 proposal. This amounts to about 49 percent of the amount on Federal lands outside of reserved areas, a decrease of 11 percent.

Adding the 2.1 million acres of reserved lands to the critical habitat totals results in about 65 percent (4.7 million acres) of remaining owl habitat on Federal lands receiving additional levels of protection (about 50 percent of all lands). However, the actual amount of suitable nesting and roosting habitat within reserved areas is unknown; the 2.1 million reflects total acreage containing expected suitable habitat within reserved areas. Therefore, all totals that include reserved acreage overestimate the total amount of protected owl habitat.

The final designation of critical habitat includes the areas on Federal lands that contain the best remaining spotted owl nesting and roosting habitat. The total amount included in the final designation also reflects the Service's concern over the status of the remaining nesting and roosting habitat on these lands.

Economic Impacts of the Final Designation

The economic analysis (USDI 1991a) provides the Service's conclusions on the potential impacts of the areas selected for final designation as critical habitat. This analysis served as a decision document in evaluating economic consequences of the action leading to the final decision to designate critical habitat. The analysis also provides additional information so that the cumulative effects of this and previous Federal actions on the timber industry can be understood in perspective.

Consistent with the requirements of section 4 of the Act, the economic analysis reviews the final economic impact of designating critical habitat. Only these incremental costs and benefits of designation may be considered in determining whether to exclude lands from designation. The economic analysis examined the costs and benefits of precluding or limiting specific land uses within the portions of critical habitat that are outside of HCAs recommended under the ISC Plan. Incremental analysis was the appropriate method to use, because the designation of critical habitat is the only action for which the Service now has decision authority. The economic costs of listing the species have already been incurred, and the economic effects of actions taken by other Federal or State agencies are outside the purview of the Service. The analysis was cast in a "with" critical habitat versus a "without" critical habitat framework and measures the net change in various categories of benefits and costs when the critical habitat designation was imposed on the existing baseline. The analysis evaluated national economic, or efficiency, costs and benefits that reflect changes in social welfare. The standard measure of those costs and benefits is economic surplus in the form of economic rents and consumer surplus. The Service recognizes, however, that in the case of the spotted owl, one region of the country and one sector of that

region's economy was primarily affected by this action. The analysis included, therefore, an examination of some of the primary regional economic, or distributional, impacts expected to occur, such as employment changes, county revenue impacts, and social costs to the affected communities.

Critical habitat designation for the spotted owl will result in a regional reduction of timber available from Federal lands, at least in the foreseeable future. That reduction will have a number of economic effects, in both the near- and long-term. From a national perspective, economic impacts are expected to be minimal.

The costs of designating an area as critical habitat are the net economic costs of precluding or restricting certain land uses over the period of analysis. Costs are measured as the difference between the resource's value in its economically best use without critical habitat and its next best use (opportunity cost) when that use is precluded by critical habitat. Economic effects include a mixture of efficiency and equity measures.

(1) National economic (efficiency) costs include:

—The change in economic rents and consumer surpluses attributable to the designated areas, with and without critical habitat. The reduction in Federal revenues from foregone timber sales is the primary component. In addition, there is a loss of consumer surplus caused by the rise in stumpage price;

—The change in capital asset values. Decreases in the value of formerly productive but now idle sawmills and processing plants represent a loss of national economic income. The change in asset value is measured as the asset's value before critical habitat designation less its scrap value when it is no longer in use; and

—Wages lost by displaced workers who remain unemployed or are reemployed at lower wages. The loss is measured as the difference between earnings in the timber industry and labor's opportunity cost.

(2) Regional economic (distribution) impacts include:

—Reductions in county revenue sharing from Federal timber sales, partially offset by increased revenue sharing from those Federal sales that remain;

—Social costs to individuals and communities caused by a slowdown in timber dependent economies, including higher welfare, counselling, and other additional costs that counties will be faced with as unemployment increases; and

—Changes in state and county property and severance tax revenue as a result of lower property values for houses and mills, and higher values for private timber holdings.

(3) Effects not considered as national economic costs include:

—Increases in profits (rents) of timber producers, including the Federal government for timber sales that remain, caused by higher stumpage prices, or the increased value of private timber stands. Those increases represent a transfer of surplus value from consumers of timber to producers, hence there is no net effect on national income; and

—The decrease in real estate (housing) values in affected areas. Such losses represent monetary losses to individual owners but are transfers from (potential) sellers to buyers and do not affect national economic income.

The reduction in Northwest Federal timber sales due to spotted owl critical habitat designation may have effects at the national and international levels as well, although they are expected to be minimal. Higher stumpage prices in the Northwest may increase demand for timber and cause higher stumpage prices in other timber producing areas of the U.S. and other timber exporting countries. Those higher prices may increase timber production, employment, and asset values in those regions, but significant national changes are not anticipated. At the national level, once all of the markets have adjusted to the new timber supply, the negative effects on the Pacific Northwest may be at least partially offset by positive effects in other timber producing areas. The economic analysis evaluated gains and losses regionally in the Northwest and did not attempt to quantify effects at the national level.

Critical habitat will result in benefits in terms of gains in spotted owl conservation as well as preserving economic benefits provided directly by the spotted owl and indirectly by its habitat. The spotted owl and its critical habitat currently provide a wide range of benefits. They include: biodiversity, aquatic and water quality, scenic beauty, intrinsic or preservation values, and recreation values.

Baseline

The economic effects of designating critical habitat, as well as the conservation benefits, are in addition to those created by listing the spotted owl as threatened and the effects of earlier actions taken by land management agencies to protect the owl under other statutes and authorities. Thus, critical habitat effects are incremental and represent only a portion of the total effect of owl conservation, both in terms of protection of the owl, other benefits, costs to the national economy, and economic impacts to the regional economy. For that reason, it is the marginal increase in owl protection provided by designation of critical habitat and the marginal change in costs, regional impacts, and benefits that the designation produces that are relevant to the analysis.

The Service proposed critical habitat for the spotted owl in May 1991, at which time the owl and most of its habitat were already provided considerable protection by previous actions by the land management agencies, as well as by the jeopardy/take provisions of the Act. The portions of critical habitat units outside the HCAs are expected to have reduced timber harvest beyond the ISC's 50–11–40 rule, and the areas within the HCAs are not expected to be harvested. The formation of the ISC and the subsequent interim adoption of all or part of the ISC Plan for spotted owl conservation by the Forest Service and Bureau have been prompted by NFMA and other management requirements. Although the Bureau has not formally implemented the ISC Plan, it incorporated important elements of that strategy in its plans and directives before the owl was listed as threatened and before critical habitat was proposed for designation (USDA/USDI 1990).

Timber-related effects of designating critical habitat concern primarily those Forest Service and Bureau timber harvests not already curtailed by earlier decisions. The designation of critical habitat outside of HCAs may reduce timber sales more than would the 50–11–40 rule. Section 7(a)(1) of the Act requires Federal agencies to utilize their authorities to conserve threatened and endangered species. Because the ISC recommendations remain the best available conservation strategy for the owl, the Service assumes that the agencies will follow the ISC recommendations in HCAs. Therefore, potential timber harvest reductions in the areas of critical habitat outside the HCAs that go beyond the 50–11–40 rule, as well as limitations on non-timber activities, will be due in part to listing of the owl (section 7 (jeopardy) and section 9 (take)), which would have occurred without critical habitat, and in part to adverse modification, which only will occur with critical habitat.

Non-timber activities in critical habitat will also be subject to section 7

consultations according to the same scenario described above. For both timber and non-timber activities, it is the incremental effects of avoiding adverse modification of critical habitat, and the marginal changes in ensuing benefits and costs, that are the appropriate measures of the effects of critical habitat designation.

For Forest Service and Bureau timber harvest, this analysis considers four levels of timber sales:

—Final Plans: Actual or Projected Final Plan timber sales, which may include some elements of old growth habitat preservation (e.g., Spotted Owl Habitat Areas);
—With-ISC: The level of timber sale which reflects agency decisions prior to listing of the owl as threatened on June 26, 1990;
—Listing: Timber sales if only the jeopardy and take provisions of the Act are applied to timber sales in the critical habitat outside of HCAs; and
—Critical Habitat: Timber sales if adverse modification provisions are also applied to timber sales in the critical habitat areas outside of HCAs.

The With-ISC timber sale level reflects the Forest Service and Bureau intention not to harvest on HCAs and to implement 50–11–40 in whole or, in the case of the Bureau, in part on areas outside of the HCAs (USDI 1990b, 1991d; USDA/USDI 1990; USDA 1991c). The Listing sale level is the timber sale remaining after the effects of applying the jeopardy/take provisions in the critical habitat outside of HCAs.

Final Plans are used as the starting point in the analysis rather that the 1985–1987 average because the Service believes they best reflect what the land management agencies would have done in the absence of the ISC Plan and other measures taken to protect the owl. The 1983–1987 average harvest level and planned harvests as of 1990 are alternatives that have been used in other analyses of owl protection efforts (see, for example, Lippke *et al.* 1990 and USDA/USDI 1990). Both alternatives have harvest levels that are significantly higher than the Final Plans used here, but those higher harvest levels do not appear to be sustainable over time, given changes in management emphasis. Using either would be misleading and would overestimate job and other losses attributable to spotted owl conservation efforts.

This conclusion is supported by other analyses. For example, Mead *et al.* (1991) in their assessment of the projected impacts of implementing the ISC Plan began their analysis using the planned agency harvest levels. Likewise, Stevens (1991), after a careful review of Olson (1990) and other documents that suggested using the 1983–1987 data, concluded that: "In any case it appears that the baseline should be the 1991–2000 planned average annual harvest for those areas to be affected by the owl protection strategy before that strategy is imposed. Most important, it would seem incorrect to attribute to the ISC Strategy those harvest reductions that had been planned in the absence of that strategy." Thus, the Forest Service and Bureau Final Plans are used as a starting point from which harvest reductions for owl conservation actions were calculated.

Limitations of the Analysis

This analysis does not include, or covers only minimally, several topics that lie outside the scope of analysis, including the effects of critical habitat designation on State and private lands and State legislation. Since State and privately-owned lands are not included in critical habitat, the designation will affect activities on these lands only in instances where some Federal approval or authorization is required for access or other purposes. In addition, some States have enacted legislation that is linked to Federal actions under the Act, such as critical habitat designation. Because such State laws are not mandated by the Act, and may be rescinded or changed at any time, this analysis does not address effects of such State requirements.

Timber Industry Background and Trends

Designation of critical habitat is the latest in a long series of court and regulatory actions concerning the spotted owl and old growth habitat that began in 1987; earlier efforts to protect spotted owls began in the early 1970's. These actions continue to affect planning activities and timber harvest on Forest Service and Bureau lands in the Northwest. The accompanying debate was focused on old growth forest protection and wildlife conservation provisions of NFMA and FLPMA, as well as on spotted owl protection. Industry trend data demonstrate the reduction of Federal harvest of 990 million board feet (mmbf) between 1988 and 1989, particularly from Forest Service lands, prior to listing the owl (June 26, 1990) and prior to the May 6, 1991 proposal to designate critical habitat. Thus, a portion of the impacts being attributed by some observers to the Act resulted from prior legal actions and changes in agency plans related to broader issues, such as old growth protection under the NFMA. The role of the timber industry in regional economies is declining in importance in all regions, including the Northwest. The incremental effect of critical habitat designation on the timber industry can best be understood in the context of the market environment of the timber industry.

The industry is dominated by a cyclical market that has historically been demand-oriented. The previous low cycle occurred in 1981–1982; westside (western Washington, Oregon, and northwestern California) industry employment dropped from a high of 165,000 in 1977 to 125,000 in 1982, a 24 percent reduction, and harvest fell from 16 billion board feet (bbf) in 1977 to 11 bbf, a 31 percent reduction.

In the mid-1980s, the forest products industry of the Northwest was in the middle of a period of reorganization and retrenchment and this process is continuing (Adams 1986). Changes in employment and labor income from the late 1970s to the mid-1980s came about primarily from mechanization and structural changes in the industry, as well as recessionary pressures. The fundamental restructuring of this industry came about for several reasons, but two seem most prominent: The exhaustion of private supplies of old growth and the rising costs of production in the Northwest compared to other regions.

Nationwide, 1986 employment in the wood products sector was 1,644,000 employees, of which 166,000 or about 10 percent were employed in the westside (USDA 1990). Employment in the Northwest dropped by 40,000 workers from 1979 to 1985; this trend has continued since 1985, but at a lower rate. A number of factors are contributing to this decline, including the continuing need for industry to mechanize to remain competitive, the loss of markets to other regions and, more recently, the reduction in timber supply from Federal lands. A significant increase in productivity occurred from 1975 to 1988, from the processing of 109,000 board feet per worker in 1975 to 146,000 board feet per worker in 1988 (Mead et al. 1991), resulting in a considerable reduction in employment. Offsetting these downward pressures on employment is the increasing percentage of recovery of products from logs. However, overall employment is predicted to further drop in all timber regions by the year 2040 (USDA 1990).

Much of the focus on employment losses in the Northwest has been on the limitation of log supplies from Federal lands, assuming that demand for these products would permit essentially unlimited harvest and production if

supplies were not limited. There is some evidence that the demand, at least in the short-term, is weak and that recessionary trends are partially to blame for employment cutbacks in the Northwest. For example, the State of Washington Office of Financial Management and Employment Security Department (1991) noted that, "the recession-induced downturn in housing construction across the nation put downward pressure on the demand for lumber and wood products during the third quarter 1990. A major real estate slump in the previously red-hot Asian (principally Japanese) market additionally cut into the demand for raw, unprocessed logs, a major export commodity in Washington. All of this depressed demand and contributed to both the over-the-quarter and over-the-year declines in statewide lumber and wood products."

The analysis goes on to state that final demand for lumber and wood products will not diminish, but reduced supply will lead to a "shaking out" of operators over the next decade. The volume of unprocessed raw log exports increased steadily from incidental levels in the 1950s. Exports now represent about 5 percent of total U.S. lumber production; in the Northwest, the 1989 log export volume of 3.7 bbf represented 25 percent of log volume but only 17 percent of timber product value (USDA 1990). Over 95 percent of these exports were softwood logs, 60 percent of which were exported to Japan. However, the U.S. is a net importer of wood products. Nationwide, in 1986 about 2.3 billion cubic feet (cu ft) were exported, whereas 4.6 billion cu ft were imported (U.S. Bureau of Census 1989).

The Forest Resources Conservation and Shortage Act of 1990 further restricted log exports. It is estimated that about 600 mmbf of logs that previously entered the export market will be available to local mills in 1991 and after, with 450 mmbf coming from State lands and the remainder from private lands (Backiel and Baldwin 1991). Log exports represent a potential 24,000 direct timber industry jobs in the Northwest, but nationwide a total export ban is expected to depress stumpage prices and result in a loss of 16,000 direct timber industry jobs (O'Toole *et al.* 1991) and negatively impact jobs in the shipping industry. With naturally decreasing availability of large logs, the export market is expected to decline in the mid-1990s with or without further protection of older forests.

Sustainable Harvest

The Forest Service and timber industry were aware in 1969 that the harvest rates planned in the Northwest at that time could not be sustained, given the planned levels of management intensity in place at that time; both harvest rates and employment were predicted to decrease over time (USDA 1969). The report predicted that the 1969 trends in harvest from private lands in western Oregon and southwestern Washington would lead to a 65 percent reduction in harvest over a 30 year period (to 1999). This situation has not improved since 1969 because an additional 22 years of high harvest has occurred in the region.

Inventory on westside forest industry lands in the Northwest has declined at a steady rate during the past 40 years. Inventory on industry lands was estimated at 33.7 billion cu ft in 1950, dropping to 19.5 billion cu ft in 1985 (Adams *et al.* 1988). Inventory on other private lands dropped by almost 2.5 billion cu ft during that same period. Declining inventory occurs as high-inventory, old growth forests are converted to managed stands or when harvest exceeds growth. Harvest from Federal lands in the westside nearly doubled during this period, from 1,800 mmbf in 1950 to almost 3,500 mmbf in 1985 (Adams *et al.* 1988).

The Forest Service (USDA 1990) reported that the removal of softwood growing stock in western states exceeded net annual growth, indicating that inventory continues to be depleted faster than it is replaced. This trend is expected to continue in the Northwest under current management plans. Projections show that total inventory of softwoods is expected to further decline from 33,607 million cu ft in 1986 to 28,993 million cu ft in the year 2000 and declining further to 25,133 million cu ft in the year 2040. Harvest is likewise expected to drop from 659 million cu ft in 1986 to 562 million cu ft in the year 2000. There is expected to be a continued transition in the Northwest that converts old growth forests to young managed stands (e.g., Sessions *et al.* 1990, USDA 1990). Planned harvest in the next 50 years is expected to reduce the average age of trees harvested to 80–90 years on Forest Service lands, to 50 years on Bureau lands, and to 45–65 years on private land (Sessions *et al.* 1990).

A further concern is that even the harvest levels predicted in forest plans may be too high and may overstate the amount of timber actually available for harvest. Johnson *et al.* (1991) in their report to Congress stated that Federal forest plans for the westside may have overestimated potential harvest by as much as 20 percent from some forests. Thus, harvest levels realized from Federal timberland may actually be below planned cuts because planning documents may reflect inventories higher than those that actually exist.

Costs of Critical Habitat Designation

The following sections summarize the results of the Service's analysis of economic data and identify the potential costs associated with the final designation of critical habitat.

Regional Effect on Federal Timber Harvest

The areas designated as critical habitat for the spotted owl include HCAs identified by the ISC Plan (Thomas *et al.* 1990). The Service used the most recent Forest Service and Bureau estimates to evaluate the economic effects of critical habitat designation on Federal timber sales. Some of their timber volume estimates were adjusted by the Service to account for differences between the critical habitat units on the Forest Service and Bureau lands in the August 13 proposal and the critical habitat units as defined in the final rule. The loss of timber-based revenue (economic rent) to the Federal government from Federal timber sales was the primary component of economic cost considered. Effects on timber-based employment and revenue sharing with counties also were examined.

Certain assumptions were necessary to estimate what may occur in the future, with and without designation of critical habitat. In conducting their analysis, the Forest Service and the Bureau considered a number of alternatives about timber supplies, price responses, and other regional and national factors which determine the economic effects of reducing Federal timber sales in the three-state region. Key assumptions used in this analysis include:

—Stumpage prices in the region will rise when Federal timber sales are reduced. Rising prices for timber sales that remain tend to offset reductions in Federal timber-based revenues, result in lower log exports from the region, and stimulate an increase in harvest from private lands, at least in the near-term; and

—The full effect of timber harvest reductions on regional economies will not be evident for several years because there are 4–6 bbf of timber on Forest Service and Bureau lands that have been sold and are available for

harvest. Thus, the Service assumes that 1995 is the first year the full impact of these regulations are likely to occur, as did the Forest Service and Bureau in their analyses. Some impacts may have already occurred as a result of the critical habitat proposal, but the full impact should not occur for several years.

The Forest Service 1995 planned a harvest level of 3,024 mmbf is considerably below the average annual sale in the late 1980s, whereas the Bureau 1995 planned sale of 1,193 mmbf is slightly higher than the 1985–1989 average. Four estimates of Forest Service and Bureau timber volume available for sale in 1995 were considered in the analysis. The sequence began with planned sales (Final Plans) and shows decreasing timber volumes available for sale, first with reductions from planned sale levels made prior to listing (With-ISC), then from the potential effects of listing the owl as threatened (With-Listing), and finally with the potential effects due to adverse modification of critical habitat (With-Critical Habitat).

In deriving their estimates, the Forest Service and Bureau made somewhat different assumptions for their With-ISC timber sales. Both assumed no timber sales in the HCAs. The Forest Service assumed that the 50–11–40 rule would apply to areas outside the HCAs. The Bureau assumed only partial implementation of the 50–11–40 rule, and attributes owl protection measures on their lands to the Act, including listing and critical habitat designation. The number of acres in the critical habitat units in the final rule also differs from the August 13, 1991, proposal. Thus, the estimates provided by the Forest Service and the Bureau from the previous proposals are not used directly in this analysis.

Based upon Service experience in section 7 consultations to date regarding the owl, the Service assumed that of the total reduction in sales, 70 percent would be due to listing impacts (application of the jeopardy standards and take prohibitions) and the remaining 30 percent would be due to critical habitat (application of the adverse modification standard). The Service believes that most restrictions or changes to harvest activities in critical habitat would result from efforts to avoid section 7 jeopardy opinions. The percent harvest assumed allowable in this analysis ranged from 5 percent to 25 percent of planned harvest and varied by physiographic province.

Using the assumptions as outlined in the economic analysis, the designation of critical habitat represents a potential reduction of regional harvest volume by 102 mmbf, which is 2 percent of the planned timber harvest volume (Table 4). This follows a With-ISC reduction of 1,682 mmbf annually, as a result of prior owl protection measures, representing 40 percent of the Final Plan volume. Listing may result in an additional reduction of 236 mmbf, or 6 percent of the Final Plan volume. Impacts on regional timber-based revenue, employment, and revenue sharing for affected counties are derived directly from these changes in timber volume.

TABLE 4.—SUMMARY OF INCREMENTAL EFFECTS OF THE DESIGNATION OF CRITICAL HABITAT

Area of reduction	Reduction caused by			
	Final plans	Implementation of ISC plan	Listing the spotted owl	Critical habitat
Timber volume (mmbf):				
Washington	718	−408	−32	−14
Oregon	2,998	−1,008	−186	−80
California	500	−266	−18	−8
Three-State Total	4,217 mmbf	−1,682 mmbf	−236 mmbf	−102 mmbf
Timber value (million 1990 dollars):				
Washington	174	−89	−11	−5
Oregon	1,111	−207	−96	−42
California	152	−82	−6	−3
Three-State Total	1,437	−378	−113	−50
Timber employment (total jobs):				
Washington	10,342	−5,935	−415	−178
Oregon	48,300	−17,676	−2,739	−1,174
California	7,753	−4,094	−157	−68
Three-State Total	66,395	−27,705	−3,311	−1,420
Payments to counties (million 1990 dollars):				
Washington	39.4	−20	−2.7	−1.1
Oregon	401.1	−69	−37.2	−16.5
California	38.2	−21	−1.6	−0.7
Three-State Total	478.7	−110	−41.5	−18.4

Regional Effects on Timber-based Revenue

The price and revenue estimates in this section are gross measures. Net revenues are discussed in the following section. The estimates of timber-based revenue incorporate the rising price assumption used by the Forest Service in their analysis. The effects of the business cycle on the demand for lumber, and other factors influencing the timber economy both regionally and nationally, are incorporated in the Timber Assessment Market Model (TAMM) developed by the Forest Service and used to estimate the market effects of owl protection measures.

The Forest Service estimates that timber and lumber prices will rise significantly by 1995, a projected "boom" year for the national economy, with corresponding effects on total timber-based revenues (USDA 1991b). For example, softwood stumpage prices in western Oregon and Washington are estimated to increase 14 percent between 1988 and 1995 under the Final Plan sale volumes. When the With-ISC, With-Listing, and With-Critical Habitat effects are added, the price increase is even greater (the With-ISC stumpage price is estimated to be 30 percent higher than the Final Plans price by 1995). The data indicate that carrying out the mandates of the Endangered Species Act would result in an approximately 3 percent increase to the 1995 stumpage price, 2 percent for listing impacts and 1 percent for critical habitat, based on the assumptions used in this analysis. From a national

perspective, stumpage prices should not increase significantly because of the relatively small reduction that will occur in national timber harvest. The approximately 102 mmbf reduction in westside supply from critical habitat compares to a national harvest of 38.5 bbf (USDA 1990), or less than 0.26 percent of the 1986 national harvest. The Forest Service concluded that the designation of critical habitat would have little effect on forest product prices in other regions of the country (USDA 1991b).

The revenue loss estimates incorporate those price changes discussed above. The critical habitat estimate represents $50 million, or 3 percent of the Final Plan total. The difference in total revenues between Final Plans and With-ISC is $378 million, or 26 percent of the Final Plan revenue total, and the listing impact is an additional $113 million.

Reductions in County Revenue

Federal timber-based revenues are shared with the states and counties where the timber is harvested (25 percent of gross revenues for the Forest Service and 50 percent for the Bureau). Those payments are expected to be reduced by $18 million due to critical habitat designation. The With-ISC sale level may reduce payments to counties by $110 million, or 23 percent of the Final Plans total, and listing impacts may represent an additional loss of $41 million.

The revenue sharing payments were calculated for each county to determine the potential differences in county payments between the Final Plans, With-ISC Plan, With-Listing, and With-Critical Habitat after each reduction in available timber harvest volume. The percent reduction for With-Critical Habitat varies substantially between counties with the largest potential decreases generally occurring in Washington. Oregon faces the greatest potential reduction in Federal timber revenue, losing over $16 million dollars annually. However, on a county-by-county basis, more substantial reductions would be evident in Washington. It is estimated that eight counties in Washington may lose in excess of 10 percent of their county timber revenues over and above the payments estimated after listing the owl as threatened. Overall, the three-State area may face a reduction of 5 percent in Federal revenue sharing payments, although the distribution of the losses is not uniform.

Net Economic Loss to the U.S. Treasury

The estimated gross dollar loss to the U.S. Treasury from a harvest reduction of 102 mmbf is approximately $50 million. There are two offsetting balances that are deductible from the gross loss in order to get the net loss of economic efficiency attributable to the designation of critical habitat: The administrative cost of conducting timber sales is a cost that will not have to be borne for the reduced volume, and road credits associated with the reduced volume will not have to be deducted from the sales value of the timber. Both offsetting balances have been estimated for each of the national forests. Only the administrative costs have been estimated for the Bureau districts since road credits are not applicable to their sales. After deducting the appropriate administrative costs and road credits, there is a net loss to the U.S. Treasury attributable to the critical habitat designation of nearly $44 million annually.

The estimated net loss to the U.S. Treasury may be overstated. The Government Accounting Office reported in recent testimony that government costs exceeded revenue for approximately 9 percent of timber sales in Forest Service Regions 5 and 6 (Pacific Coast States) in 1990 (GAO 1991). Three different estimates of the government cost of timber sales were calculated for comparison with revenues: (1) Average sale and administrative costs, (2) average operating cost per thousand board feet multiplied by the board feet of sales, and (3) average total operating cost as in (2) above plus regional office and Washington office overhead and payments to states. Costs calculated under alternative (1) appear closest to counting only marginal economic costs, which are required in this analysis. Thus, the net revenue loss to the U.S. Treasury presented above was estimated with conservative assumptions and is a worst case estimate.

Employment Effects

Projected reductions in the volume of timber offered for sale by the Forest Service and the Bureau as a result of designating critical habitat for the spotted owl are expected to affect levels of employment in the region's timber and related industries. At a national level, employment is not expected to be significantly impacted as a result of the critical habitat designation.

Estimates of timber-based employment effects caused by critical habitat designation were derived using empirical data on the timber industry in the Pacific Northwest and IMPLAN input-output models of the regional economies in the three states. The IMPLAN modeling system was developed by the Forest Service to assess the regional economic effects of changes in the availability of timber.

IMPLAN models were used to estimate job response coefficients (jobs per mmbf) for each of the affected counties. The coefficients were applied to the board foot reductions expected to result from designating as critical habitat a specific number of Forest Service or Bureau acres in each county. The resulting estimates of job loss by county were aggregated to the forest or district level and subtracted from the Final Plans and employment estimates provided by the Forest Service to estimate listing and critical habitat employment effects by forest and district.

The IMPLAN models constructed for this analysis focused on county level timber harvest reductions, based on the location of individual critical habitat units. Special attention was paid to intercounty log flows in order to take into account the processing of timber in counties other than those in which it is cut. Also, to improve county level analyses, the effects of large metropolitan areas on timber-based economies were extracted from five counties in Oregon and five counties in Washington. County level analysis was instrumental in balancing benefits and costs of critical habitat designation as required by the Act.

The Final Plans and With-ISC employment levels for the Forest Service were provided in its most recent comments [USDA 1991c]. The employment levels were derived using the job response coefficients derived for this analysis and the estimates of timber volume. They include direct, indirect, and induced employment. The county job response coefficients used in the analysis range from 8.01 to 17.11, with an overall weighted average of 13.9. The coefficients projected direct jobs and indirect/induced jobs separately.

Critical habitat designation potentially represents a regional loss of 1,420 total jobs, 847 direct plus 573 indirect and induced jobs. The With-ISC and Listing timber sales represent a lower number of timber-based jobs in 1995, as compared to employment that would be supported by the Final Plans volume. The With-ISC level may reduce employment by 27,705 compared to Final Plans. The total decrease attributable to the Act may be an additional 4,731 jobs. Of those, an estimated 3,311 would

result from listing impacts on the critical habitat in the areas outside the HCAs.

Critical habitat impacts affect less than one half of one percent of Regional timber industry employment, and total spotted owl protection will affect about 21 percent of regional timber employment. At a national level, the potential loss of 847 direct jobs represents a very small percent of the 607,000 workers in the primary timber processing industries (1986 data). Direct job losses from owl protection measures on Federal lands (18,155 jobs) represents 3 percent of the direct timber processing employment nationwide. It should be noted that some of the regional employment adjustments associated with the spotted owl conservation measures have already occurred as a result of court injunctions, the listing of the species, and the proposals to designate critical habitat. The degree to which this adjustment had been made is difficult to ascertain. Offsetting circumstances could significantly reduce the affect of supply restrictions in the Northwest.

The percent of timber industry jobs that may be lost varies by county; however, most counties will experience a loss less than 1 percent of their direct timber industry jobs. Oregon may be the most heavily impacted state, losing 707 direct jobs of the total 847 for the three states. This could represents as much as 1.4 percent of Oregon's total timber jobs, after adjustment for employment losses due to the ISC Plan and listing of the owl. On a county basis, the potential loss of jobs as a result of projected timber volume reductions on the Forest Service and Bureau lands may be 1 percent or more of total industry jobs in 12 counties, with Douglas County, Oregon, experiencing the largest total job loss, at 267 jobs (7.6 percent).

County economic diversity is one factor that can lessen the impact of the projected loss of timber industry jobs. Not only does it provide more reemployment opportunities for affected industry employees, but it also provides a broader base of employment in those jobs indirectly supported by timber harvest. When job losses occur in isolated areas where there are relatively few employment alternatives, the impacts are usually longer lasting.

Wage Loss

Wage and salary losses associated with job losses are a national economic efficiency loss measured as lost wages for the time of unemployment and the difference in workers earnings after reemployment. The assumptions used in this study are similar to Mead *et al.* (1991) where 92 percent of displaced workers remained unemployed for up to 1 year and the remaining 8 percent became reemployed at the end of the second year. After the second year, the difference between average timber industry wages and average manufacturing wages is used to assess the value of economic loss.

The estimates that Mead *et al.* (1991) used for average timber industry wage rates were adjusted to 1990 dollars to reflect the earnings losses of displaced workers. Similarly, the average of all industry wage rates was adjusted to 1990 dollars. The duration of time for the impacts is 20 years after which most, if not all, currently affected workers will be either out of the workforce or will have achieved a wage rate comparable to the wage rate they would have received in the timber industry. The discount rate used in the calculation of the present value of earnings lost is 10 percent (the Office of Management and Budget approved rate for government projects). The discounted present value of wages lost may be nearly $65 million, with an annualized value of $7.6 million. The national economic efficiency loss attributed to unemployment effects is calculated under the conservative assumption that reduced harvest levels will remain constant for the period of analysis, which is not expected to be the case.

An estimate of the net change in capital asset value that may result from the designation of critical habitat is not possible with existing data. The estimates of mill closures and home asset value losses that were presented in public comment (Lippke *et al.* 1990, Mead *et al.* 1991) considered the total losses attributable to all preservation efforts for the northern spotted owl. The home asset losses are a pecuniary effect and reflect a transfer payment from sellers to buyers of homes. Home asset losses are a regional distribution impact and not a national economic efficiency cost. Similarly, asset value gains to private landowners both in the Northwest and elsewhere are transfer payments and not national economic efficiency costs.

Mill closures potentially attributable to critical habitat designation would be a reduction in national productive capacity and would be valued at the opportunity cost of capital (salvage value if the capital has no other uses). It may be argued that investment in a plant and equipment is a sunk cost of doing business and, therefore, there is no asset value loss.

The analysis of critical habitat designation is far more limited in scope and focuses only on the portion of the total preservation effort that is associated with the critical habitat for the spotted owl. There are insufficient data to isolate the portion of any asset value loss estimates that are attributable solely to critical habitat.

Social Costs

The social implications of protecting the northern spotted owl throughout Washington, Oregon, and northern California are significant and widespread, yet difficult to isolate from changes occurring in the forest products industry that are unrelated to the proposed action. Public comment on the proposed rule received from many timber-dependent communities emphasized the potential severity of social impacts. Historically, timber-dependent communities and the wood products industry have experienced volatility of markets and cycles of prosperity and recession. A major source of change in the timber industry has been the technological advances over time that have caused and continue to cause job losses. Mechanization and computerization has greatly reduced the manual work involved in the industry. A study by Lee *et al.* (1991) examined the social impacts of harvest reductions in Washington. Critical habitat adds an incremental impact to the effects of other owl protection measures and to other market factors depressing the timber industry, which have cumulatively been severe in some locations.

Non-timber Effects

Non-timber harvest activities on Federal lands are subject to the consultation process under section 7 of the Act. When a listed species or its habitat is involved, the impact on projects may come about because projects are modified to minimize the impact on the listed species and/or its habitat. In the case of the northern spotted owl, several projects have been proposed in critical habitat. Determining which of these projects would be modified as a result of a section 7 consultation or any costs associated with modification of project plans is the first step necessary to estimating the impact of these projects. The second step consists of estimating the net consumer surplus lost to society as a result of the restricted supply of an activity caused by critical habitat designation. The fact that a proposed expansion to a ski area, for example, may result in more visitor days does not necessarily result in increased societal welfare. The potential loss of visitor days at competing ski areas would have to be considered before a final

determination is reached about the net change in consumer surplus.

Given the relatively small number of areas and acres of critical habitat involved in the proposed list of projects, it is doubtful that a significant impact would result from non-timber activities. However, the Service cannot prejudge the results of the section 7 consultation process for any of the proposed projects. While the Service is aware of the proposed non-timber activities, they cannot be quantifiable. The Service will assist project sponsors through the section 7 consultation process.

Effect on Private Lands

Although it is expected to be minimal or nonexistent, effects of critical habitat designation may occur for activities on private lands where there is a Federal nexus (e.g., restricted access to areas through critical habitat on Federal lands). Areas in checkerboard ownership may be particularly sensitive since access may be limited to existing roads on Federal land. Activities on private lands that require use of Federal lands or authorization (e.g., constructing new roads in critical habitat on Federal lands) would have to go through the section 7 process which may result in added project costs. The Service is not able to determine actual impacts on lands adjacent to critical habitat at this time, but the impacts are expected to be minimal.

Public comments received during the proposal stages of critical habitat designation did not identify specific examples of private lands affected by proposed critical habitat. However, the Service is aware that such situations may exist and will work with other Federal agencies through the section 7 process to minimize effects on private landowners.

Summary of Potential Impacts

The primary economic cost of the designation is to restrict timber harvest on Federal land. The incremental cost is an estimated annual reduction in timber harvest of 102 mmbf, with secondary effects on regional employment and revenue sharing with county governments. The employment effect is a projected loss of 847 direct plus 573 indirect and induced jobs for a total of 1,420 jobs in the three state area. Lost payments to counties represents an estimated $18.4 million loss annually. Some of these effects have already started to occur, and are expected to be in full effect by 1995. There may be offsetting effects in the timber industry that may partially mitigate some of these effects, at least in the short term, in the form of replacement logs from a private sector response, decreased log exports, and the availability of 4–6 bbf of sold but uncut timber. Benefits include improved watershed protection, decreased stream sedimentation, increased anadromous fish habitat, protection of regional biodiversity, and existence values to the American public.

Offsetting or Mitigating Factors

Increased timber harvest on private lands in response to higher stumpage prices and new restrictions on log exports may both result in additional logs being available to regional sawmills and processing plants to replace, in part, the reduction of timber available from Federal lands as a result of the designation of critical habitat for the spotted owl. The effect of these replacement logs will be to lessen the employment impacts discussed above. Key factors determining the size of both mitigating effects are the size of the response and the location of the newly available timber. Further, there are 4–6 bbf of sold but not harvested logs in the region, and much of this would be expected to enter the market, which may help reduce short-term impacts of log reductions. Increases in stumpage price are expected to induce private timber owners to increase their harvest, at least in the near-term, by harvesting timber sooner than originally planned. Although the amount of the private sector response is uncertain, available data suggest that it may produce a significant source of replacement timber. The Forest Service estimated that implementing the ISC Plan would result in a 30 percent increase in regional stumpage price, and that private timber owners would respond by increasing their annual harvest in the region by 445 mmbf by 1995, a 4.2 percent increase in timber supply (USDA/USDI 1990). (The response indicates a supply elasticity of 0.14. Mead *et al.* (1991) report a similarly small supply elasticity of 0.13.)

The timber harvest reductions attributable to the Endangered Species Act are estimated to result in an additional stumpage price increase of 3 percent (USDA 1991b). Assuming the same supply response for that relatively small additional price rise may result in an additional 47 mmbf of private harvest. The location of the additional private harvest and how available it may be to the logging operations and processors dependent on Federal log supplies cannot be determined. However, using the average job response coefficient of 13.9 jobs/mmbf, the private sector response may produce 6,186 jobs when Federal supplies are reduced from Final Plans to With-ISC sale levels, and an additional 654 jobs With-Listing and With-Critical Habitat effects. The private sector response is expected to be relatively short lived, however, with private harvest falling below the baseline level by the year 2000, with a subsequent reduction of timber-based employment.

The export of unprocessed logs from the Pacific Northwest has represented a significant proportion of total harvest in recent years. In 1988 to 1989, 3.7 bbf of logs were exported from the region, 25 percent of total harvest. Export of unprocessed logs continues to be controversial. Opponents of exports argue that processing jobs and value added that could benefit the regional economy are exported as well. Proponents of exports claim that exports allow owners of timber to obtain the premium prices foreign markets offer for Pacific Northwest timber, and that restrictions on exports would impose a social welfare loss on the domestic economy.

Exports of logs from Federal lands have been prohibited since the early 1970s. Federal legislation in 1990, aimed in part at offsetting the employment effects of owl protection efforts, restricted log exports from State-owned lands and stiffened restrictions on the use of Federal logs as substitutes for private logs that are exported. Restrictions on exports from State-owned land are expected to make 450 mmbf available for domestic processing, primarily in Washington (Stevens 1991). Tighter monitoring of log substitution is expected to make an additional 150 mmbf available for domestic mills. Using the 2.8 jobs/mmbf involved with logging and export operations reported by Northwest Forest Resource Council (1989) and the average job response coefficient of 13.9 jobs/mmbf developed for this analysis, reducing exports may produce a net increase of 11.1 jobs/mmbf. Thus, the 600 mmbf may result in a net increase of 6,660 timber-based jobs in the region when the new export restrictions are in full effect.

The rise in domestic stumpage price as a result of reduced Federal timber sales is expected to have the further effect of reducing log exports from private lands as log exports from the region become less competitive in international timber markets. The Forest Service estimated a 21 percent decrease in exports from the region as a result of higher prices caused by reducing timber sales from Final Plans to the With-ISC Plan (USDA 1991b). Critical habitat designation may reduce exports somewhat more as prices rise. It cannot be determined what proportion of logs no longer exported from private lands

would become available for local processing.

Benefits of Critical Habitat Designation

Designation of critical habitat for the spotted owl is expected to provide a wide range of economic benefits to society. These economic benefits are whenever possible defined in monetary terms. They include use values as well as intrinsic or preservation values. Benefits provided by preservation of the owl's habitat include the same types of direct and indirect use values of old growth forest ecosystems. Habitat preservation also provides water quality protection, scenic and air quality, biological diversity, and other environmental services.

Benefits of critical habitat designation are in addition to those provided by listing of the owl as threatened or those derived from other actions taken by land management agencies to provide protection to the owl and its habitat. Only the incremental protection provided by critical habitat designation, and the ancillary benefits attributable to that action, are compared with the incremental costs of restricting timber harvest and other economic effects of designating critical habitat. When areas of proposed critical habitat were considered for possible exclusion, the incremental effects of exclusion on both benefits and costs were compared.

A number of non-timber related service flows currently provided by critical habitat would have continued without critical habitat designation, but most would be different. Including an area in the critical habitat designation has allowed the values the area now provides to be maintained or develop over time. In most cases those values would have been changed if the area had been excluded from critical habitat because higher levels of timber harvest or other actions might have been carried out. From a "with" and "without" perspective, the net benefit of critical habitat designation is the difference between total values when an area is part of critical habitat (with) and their value when the area is not included in critical habitat (without).

Many of the benefits provided by protection of the spotted owl and its habitat are not marketed. The lack of market prices makes it difficult to value them in dollar terms, as compared to timber harvest and other commercial activities. No comprehensive dollar estimate of the benefits of designating critical habitat is feasible with available data. Rather, the analysis provided here references data from several sources in order to identify some of the benefits expected to result from the designation of critical habitat, with empirical examples when available.

Recreational Use Benefits

Direct recreational uses of a threatened species often are limited because there may be too few animals to supply observation or other recreational opportunities. However, even though the spotted owl population may be too few in number to provide widespread direct recreation to wildlife watchers, its habitat provides other kinds of enhanced recreational opportunities. Forest land harvested for timber invites certain recreation activities, such as deer hunting and off-road vehicle use. Older forests invite hiking, camping, and primitive and semi-primitive recreation. Without considerable analysis, it cannot be determined whether the net change in older forest recreation values would be positive or negative with timber harvest.

However, data from the Oregon State Parks and Recreation Department (USDI 1991c) and a review of current forest plans for Washington and Oregon indicate that the acreage of roaded recreation areas exceed the demand for recreational opportunities of that type while the demand for recreation on primitive and semi-primitive recreation areas is not satisfied. If annual recreational use of the proposed 1.69 million acres of critical habitat added to the HCAs were to average one person per acre with average consumer surplus of $30 per visitor day, direct use recreation benefits would total $50.7 million per year.

Aesthetic Benefits

Psychological studies of human perceptions toward scenic beauty provide evidence of a strong link between perceived aesthetic quality and objective measures of changes in the appearance of a forest, such as the retention of visual corridors along roads. Scenic beauty ratings of forest quality are often an important determinant of willingness to pay for a forest recreation experience (Brown *et al.* 1989). According to 95 percent of users, scenic quality is important to the recreational experience in national forests (Walsh and Olienyk 1981, Walsh *et al.* 1989). The effects of harvesting older forests in the Pacific Northwest on scenic quality have not been studied, but they can be inferred from work in other regions. Studies have found that harvesting mixed age stands of second growth forest with some older specimen trees would reduce average consumer surplus per visit and total visitation by approximately 70 percent (Walsh and Olienyk 1981, Walsh *et al.* 1989). Reductions are reported for all recreational activities studied except hunting and driving off-road vehicles, for which harvest often increases opportunities. As the available supply of older forests becomes increasingly scarce, the opportunity to use older forest recreation areas will diminish and scenic quality of the remaining areas will become increasingly valued.

Biodiversity Benefits

The designation of critical habitat for the spotted owl contributes to the protection of regional biodiversity in the Northwest. The habitat of the northern spotted owl represents a unique ecosystem of diverse plant and animal species. Most attention has been directed toward protection of the spotted owl, but this is only one of several hundred vertebrate species occurring in the Pacific Northwest (Bruce *et al.* 1985, Ruggerio *et al.* 1991). This species richness and abundance depends to a large extent on the presence of mature and older forests (Ruggerio *et al.* 1991).

Northwest forests accumulate more biomass than tropical forests (Franklin 1988), and also provide protection to the soils, particularly on steeper slopes, and maintain higher water quality with lower sediment yields. Management strategies designed to provide 50 to 90 year old trees for harvest on public lands in the Northwest are not likely to provide the same benefits to regional biodiversity as would stands managed at longer rotation lengths, nor will they provide the same benefits that are found in areas protected from clearcut harvest techniques.

The recent discovery of a cancer-fighting chemical in the Pacific yew further demonstrates the potential economic importance of maintaining biological diversity in Northwest forests. In addition, protection of spotted owl habitat may obviate the listing of other species dependent on that same habitat type, thereby reducing future economic costs of listing species and critical habitat (e.g., the marbled murrelet). Other plant and animal species, including stocks of anadromous fish, are being considered for listing in the Northwest. If their habitat is adequately protected as a result of designating spotted owl critical habitat, the need for future listings may be reduced. Thus, the conservation of the owl promotes the ecosystem level conservation needed to protect other plant and animal species and is a benefit to society.

Aquatic Benefits

Research has demonstrated that many declining fish populations are found in or downstream from areas where logging and road building are the primary causes of stream habitat degradation (Hartman and Scrivener 1990). The designation of critical habitat is expected to reduce the amount of logging and, thereby, provide benefits in the form of reduced soil erosion, decreased sedimentation in streams, and improved habitat for salmon and other stream fauna. Increased productivity of streams and increased numbers of anadromous and other stream fish have direct economic as well as non-market benefits to society.

The watersheds of the Pacific Northwest protect fisheries resources that are valuable to both commercial and recreational use (Frissell 1991). Numerous coastal cities and small communities in the rural areas are dependent on tourists as well as sport and commercial fisheries. Several studies have found a positive relationship between fish populations, the fishing catch rate, and the consumer surplus value of fishing for salmon in the Columbia River Basin, trout in Colorado, and salmon in Idaho. For example, Loomis (1988) predicted that catchable salmon numbers from streams in the Siuslaw National Forest could double if current timber management practices were terminated. Economic losses to salmon and steelhead fisheries from future timber harvest on 86,700 acres in the Siuslaw National Forest were estimated to be $1.7 million over a 30 year period (Loomis 1988).

Intrinsic Values

Estimates of recreation user demand, benefits of scenic beauty, and benefits of water quality represent only a partial estimate of the total value society places on the spotted owl and its habitat. The public also is willing to pay for the increased probability of owl survival that may result from the improved information that becomes available when harvesting old growth forests is delayed, the knowledge that the natural ecosystem exists and is protected, and the satisfaction from its bequest to future generations.

Rubin *et al.* (1991) reported adjusted values of $35 per household for residents of Washington State, with 249 responding to an open-ended question in a mail survey. The authors estimated spotted owl preservation values of $37 per household for Oregon, $21 for California, and $15 for the rest of the U.S., aggregating to about $1.5 billion per year (1987 dollars). Hagen *et al.* (1991) reported a threshold value estimate ranging from a low of approximately $3 to a high of $8 per household in the U.S.

In a study based on a national mail survey of nearly 400 households, Hagen *et al.* (1991) reported that 81 percent favored protection of old growth forests and northern spotted owls. The average willingness to pay higher taxes and wood product prices reported in a referendum contingent valuation format was $190 per year. The lower limit of the 98 percent confidence range around the mean value was $117 per household. A study by Olsen *et al.* (1991) reported the average willingness to pay for increasing runs of salmon and steelhead. Nonusers who reported no probability of future participation in the sport of fishing valued the resource at $27 per year, while nonusers who stated some probability of future participation valued it at $59 per year.

Long Term Effects of Critical Habitat Designation

To determine how the effects of critical habitat designation will change over time requires projections of many parameters that may themselves change in uncertain ways in the future. The dynamic interactions within regional and national economies are hard to predict and, at best, some indication of the direction and order of magnitude of change is the best estimate that can be provided. Many factors are expected to influence the level of impact critical habitat designation will have on national and regional supply of wood and wood products. For example, construction and new housing starts with their derived demand for wood and wood products will interact with the available timber supply to determine future stumpage prices. Changes in stumpage prices will, in turn, affect economic decisions about the timing of timber harvesting. Also, the relative competitive position of the Northwest timber industry sector in the National market will have a substantial affect on the timber communities in the three State area.

The development of a new projection model was not within the scope of the economic analysis of designating critical habitat for the spotted owl. However, existing projection efforts were examined and their findings interpreted within the context of critical habitat designation.

One factor of primary interest is the harvest rate allowed in critical habitat as the forest condition improves in habitat quality for owl populations. Most of the costs delineated in the economic analysis stem from reduced timber harvest levels on the critical habitat acreage above the areas identified by the ISC.

The designation of portions of the three State area as critical habitat does not produce a regimen of permanent, restrictive management practices. That is not the intent of the Act or the section 7 consultation process. In the economic analysis it was assumed that national forests will have some portion (5 to 25 percent) of the sustainable yield within the critical habitat areas, outside of the ISC areas and above 50–11–40, available for timber harvest. It is expected that the percent of allowable timber harvests will increase over time as the condition of the forests improves and the owl population recovers in areas identified for protection through implementation of a final recovery plan and/or agency management plans.

Once owl recovery goals are reached, it is assumed that multiple use management practices also may be employed within the ISC areas. The determination of long-term, sustainable yield within the context of multiple use of the forest resource may result, however, in harvest rates below the 1990 plans level. As more information becomes available about species requirements for survival, and that information is incorporated into future management plans, it is expected that future timber harvest levels can be determined that stabilize the supply of timber from Federal lands at some level compatible with the nation's need for timber as well as survival of forest based species. This new equilibrium level of harvest, although perhaps lower than historic rates, will help avoid the dramatic timber community expansions and contractions typical of past cycles.

The rate at which timber harvests within critical habitat will be allowed to increase over time is difficult to determine and can only be approximated. As the owl population recovers, an increase in the allowable harvest within critical habitat units is expected. The rate at which this would occur is dependent on the type of owl management or conservation plan (e.g., recovery plan) that the agencies develop and implement, and the timing of implementation and its effects on owl recovery.

The rate of increase in allowable harvest is projected at approximately 10 percent per decade beginning in the year 2010. The time required for developing and testing new silvicultural practices on Federal land, as well as the time for the recovery of the existing forests, makes it unlikely that significantly increased harvest levels will be possible

on critical habitat before the year 2010. The implications for the Northwest of renewed availability of federal lands for timber harvesting are a downward effect on timber prices, renewed employment opportunities, and an increase in timber supply for local mills. However, jobs lost during the early 1990s will not be replaced on a one for one basis. Even at modest, annual labor productivity increases, future job creation will be lower per million board feet of timber harvested.

The Forest Service (USDA 1990) discuss simulated effects of several future scenarios of timber demand, supply and prices. The analysis uses trends in key variables that affect the timber industry to formulate baseline projections to the year 2040. Some of these underlying trends have implications for the way that economic effects stemming from the designation of critical habitat will affect the economy of the Northwest in the future. In particular, the share of U.S. softwood production coming from the Northwest is projected to decrease. During the interval from 1986 to 2040, nationwide softwood production is projected to increase from 33.9 bbf to 49.2 bbf, but the Northwest share is expected to only increase from 20.3 bbf to 22.9 bbf, a loss of 13.3 percent of the nationwide share.

A second factor is the projected employment in the softwood industries. While the base scenario projects only modest increases in Northwest softwood lumber production, labor requirements per mmbf continue to decrease. Technological innovations are projected to reduce labor requirements for all timber based industries. The average productivity rate increase is approximately 1.2 percent per year. The comparable rate reported by Anderson and Olson (1991) is 1.4 percent annually. The productivity gain in the timber industry of the Northwest was addressed in Greber (1991) who stated that the large productivity gains of the past decade that came about when mills modernized their equipment will not be sustained into the future because of two factors: First, most of the inefficient timber mills are already out of business or have retooled; and second, that increased use of timber residuals and specialized products will create additional employment, thus compensating in part for some of the productivity gains. A modest productivity gain of 1.2 percent annually was assumed to adequately reflect the changes in labor requirements in the future.

Increasing the volume of timber production on critical habitat will affect timber based employment and the net loss to the Treasury in the future. Using constant dollars (USDA 1990), the timber revenue loss associated with reduced volumes of timber harvested was estimated to the year 2040. The associated employment reductions and dollar loss to the Treasury were also calculated. In constant dollars, the net loss to the Treasury is not significantly different in the year 2040 than it is in 1995. The annual equivalent value for the time period is $49 million. However, the total job loss diminishes from 1,420 in 1995 to 541 total jobs attributable to critical habitat designation.

The Northwest economy will be affected by the implications of both the trend in production shifts to other parts of the U.S., and the capital for labor substitutions. As the demand for wood and wood products increases in the future, more pressure will be put on the Northwest to become more competitive by keeping its costs of production down. The substitution of capital for labor is a basic economic technique for minimizing production costs. The resulting higher labor productivity means that fewer jobs would be in place in the future than were lost when critical habitat was initially designated. As these economic conditions evolve, the timber industry will play a lesser role in the regional economy of the Northwest.

Available Conservation Measures

The purpose of the Act, as stated in section 2(b), is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of listed species. Section 2(c)(1) of the Act declares that "* * * all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."

The Act mandates the conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat); section 9 (prohibition of taking of listed species); section 10 (wildlife research permits and habitat conservation planning on non-Federal lands); section 6 (cooperative State and Federal grants); land acquisition; and research. Other Federal laws also require conservation of endangered and threatened species, such as the National Forest Management Act, the Federal Land and Policy Management Act, the National Environmental Policy Act, and various other State and Federal laws and regulations.

Critical habitat is not intended as a management or conservation plan. In the case of critical habitat for the northern spotted owl, association with the ISC Plan leaves the perception that the critical habitat is a form of that plan. The ISC Plan, critical habitat, recovery plan, the Scientific Panel report, and other conservation processes are working with the same land base containing specific locations of older forests. Although these are different processes, because of the limited habitat base remaining, it is inevitable that they overlap. Emphasizing large blocks of suitable habitat has been a common theme in all recovery and management processes for the northern spotted owl because it is essential to local population stability (although without connectivity among them, the blocks themselves will probably not maintain long-term ecosystem stability or long-term viability of owl populations).

The ISC analysis clearly identifies the near-term risk associated with the implementation of the ISC Plan, especially if all parts of that plan are not implemented fully or in a timely manner. The HCA strategy is based on long-term habitat development objectives to support projected owl pair targets. The near-term loss of owl habitat and owl pairs outside of HCAs prior to full habitat recovery within HCAs could lead to a significant decline in the owl population which may increase the amount of time it will take to achieve owl recovery. Over the past 2 years, the Service's section 7 analyses have begun to demonstrate the effects of continued timber harvest that, in the near-term, may increase the risk associated with the ISC Plan (USFWS 1991a, b, and c).

The Service has not done a risk analysis for critical habitat because there are no numerical goals upon which to evaluate the effectiveness of the designation. Population goals (in terms both of total numbers of owls and distribution), upon which a risk analysis would depend, were not developed for this rule but are instead part of the recovery plan process. Risk analysis is not the intended purpose of critical habitat designation. Critical habitat is primarily intended to identify the habitat that meets the criteria for the primary constituent elements. However, there are benefits that result from designation. Designation will help retain recovery options and reduce the near-term risk until a long-term conservation plan is implemented. Critical habitat

does not replace the HCA network and management recommendations of the ISC for the intervening forest matrix.

Designation of critical habitat may provide a mechanism for regulatory protection for HCAs, protection in key areas outside of HCAs (e.g., in areas designated where habitat or pair deficiencies exist or areas of high risk as identified by the ISC), linkage throughout the current range, an ecological buffer to HCAs, and/or protection of areas currently in need of special management (e.g., areas of concern or areas where linkage problems occur) through section 7 of the Act.

Designation of critical habitat does not offer specific direction for managing owl habitat. That type of direction, as well as any change in direction, will come through the administration of other facets of the Act (e.g., section 7, section 10 HCP process, and recovery planning) or through the development of land management plans that address management of the owl.

Recovery Planning

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all of the Act's activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The Northern Spotted Owl Recovery Team is evaluating critical habitat, the ISC Plan, and other current planning efforts to determine the relationship between them and to help clarify their role in conserving the owl. The Recovery Team is expected to produce a recovery plan for the northern spotted owl that will address the steps needed to recover the owl on all landownerships throughout its range and provide an acceptable mechanism for implementation. Although a recovery plan is not a regulatory document, the plan should identify requirements for managing or modifying designated critical habitat on Federal lands, as well as considerations for critical habitat on other landownerships.

Critical habitat should be compatible with the recovery effort. Although the Recovery Team may recommend changes to the ISC network (for management purposes), there should not be any conflict with critical habitat. Valid recommendations or management prescriptions developed by the Recovery Team can be applied to critical habitat regardless of whether there are different management prescriptions prescribed for HCA-type areas or other areas within critical habitat where timber harvest may be more compatible with owl conservation.

The Service has worked closely with the Recovery Team and other efforts to ensure consistency and will reevaluate the need for critical habitat after completion and implementation of the recovery plan or at any time that new information indicates that changes may be warranted. The Service may also reassess critical habitat designation if other land management plans or conservation strategies, which may reduce the need for the additional protection provided by critical habitat designation, are developed and fully implemented.

The Service expects that, consistent with section 7(a)(1) of the Act, Federal and non-Federal agencies will produce biologically sound, long-term land management plans that contribute to the conservation of spotted owls, as well as other listed and nonlisted species. Biologically credible plans such as the ISC Plan offer opportunities for resolving conflicts between timber management and owl conservation and offer a basis for present and future land management decisions. Valid and acceptable management prescriptions contained in such plans can help guide the Service and other agencies in managing critical habitat.

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure that their actions do not jeopardize the continued existence of any listed species.

Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to appreciably reduce the likelihood of both the survival and recovery of a species. Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The regulations also clearly state that such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Survival and recovery, mentioned in both the definition of adverse modification and jeopardy, are directly related. Survival may be viewed as a linear continuum between recovery and extinction of the species. The closer one is to recovery, the greater the certainty in the species continued survival. The terms "survival and recovery" are, thus, related by the degree of certainty that the species will persist over a given period of time. Survival relates to viability. Factors that influence a species' viability include population numbers, distribution throughout the range, stochasticity, expected duration, and reproductive success. A species may be considered recovered when there is a high degree of certainty for the species' continued viability.

The Act's definition of critical habitat indicates that the purpose of critical habitat is to contribute to a species' conservation, which by definition equates to recovery. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of a recovery plan. As a result of the link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery. Thus, the adverse modification standard may be reached closer to the recovery end of the survival continuum, whereas, the jeopardy standard traditionally has been applied nearer to the extinction end of the continuum.

Basis for Analysis

Designation of critical habitat focuses on the primary constituent elements within the defined units and their contribution to the species' recovery, based on consideration of the species' biological needs and factors that contribute to recovery (e.g., distribution, numbers, reproduction, and viability). The evaluation of actions that may affect critical habitat for the spotted owl should consider the effects of the action on any of the factors that were the basis for determining the habitat to be critical, including the primary constituent elements of nesting, roosting, foraging, and dispersal, as well as the contribution of the local and provincial area to recovery. The desired outcome of section 7 should be to avoid actions

that further reduce the ability of the habitat to support owls (e.g., the type of activities that led to the owls' listing, such as conversion of habitat to younger forest, short rotation rates, fragmentation, and isolation).

The range of the owl is subdivided into a number of provincial areas as previously discussed (Thomas *et al.* 1990, USDI 1990a). These subdivisions are not based upon identification of separate populations of owls, but rather on geographical habitat differences. The provinces and local populations of owls are for the most part interrelated and interconnected. Provinces, subprovinces, and individual critical habitat units are all part of a habitat network important to maintaining a stable and well-distributed population over the range of the owl. Section 7 analysis of activities affecting owl critical habitat should consider provinces, subprovinces, and individual critical habitat units, as well as the entire range of the subspecies. The basis for an adverse modification opinion should be on the provincial areas identified in this rule (see PRIMARY CONSTITUENT ELEMENTS section) and further explained in the narratives that describe the role, values, and relationships of critical habitat units (USFWS 1991e). Should the Recovery Team identify a more appropriate set of areas, they will form the basis for analysis under section 7.

The loss of one or more provinces, or even a major part of a province, could lead to genetic and demographic isolation of parts of the owls' range. Potential isolation could have a greater near-term effect on some areas (e.g., Olympic Peninsula, Washington Cascades, Oregon Coast Ranges, Shasta/McCloud area within the Klamath Mountains) because of the present status of owl numbers and owl habitat within those areas, than on other areas (e.g., north-central Klamath Mountains, westside Oregon Cascades). In the long-term, however, the concern over population stability would be similar in all areas. Population stability for the owl may depend on the relative location of large stable population reserves that act as sources for areas where mortality exceeds recruitment (sinks), that are subject to population fluctuations, or exhibit low reproductive success (Thomas *et al.* 1990).

For a wide-ranging species such as the spotted owl, where multiple critical habitat units are designated, each unit has both a local role and a rangewide role in contributing to the conservation of the species. The loss of a single unit may not jeopardize the continued existence of the species, but may significantly reduce the ability of critical habitat to contribute to recovery. In some cases the loss of a critical habitat unit could result in local instability, affecting dispersal and connectivity and, thus, reducing local population levels. This could have a detrimental effect on the stability of the province or at the least on that portion of the province where the loss occurred. That, in turn, would also have an effect on linkage to other provinces potentially leading to isolation and instability. This could preclude recovery or reduce the likelihood of survival of the species.

Each critical habitat unit is related to and dependent upon each adjacent unit, just as each province is dependent on each adjacent province. In some cases, gradual degradation of one critical habitat unit to the point where it no longer fulfills the overall function for which it was designated could also preclude the survival and recovery of the species. Over time the resulting effect could lead to greater problems at the province level and ultimately at the species level.

Present conditions vary throughout the range of the owl with the result that some areas may be less able to sustain continuing impacts than others at any given time (e.g., the Olympic Peninsula and Oregon Coast Ranges). The level of disturbance a critical habitat unit could withstand and still fulfill its intended purpose is variable throughout the owls' range and will need to be reviewed in the context of its current status, condition, and location. Because of the interrelationships between units, local areas, and provinces, it is difficult to separate out the effects on one area or level of analysis.

Each project will need review as to its impacts at all levels. When determining whether any particular action would appreciably diminish the value of the habitat for the survival and recovery of the owl, the baseline condition and expected roles for both the individual critical habitat unit and the surrounding units must be considered. Among the factors to be considered are: The extent of the proposed action; the present condition of the habitat (e.g., percent of the area suitable for nesting, roosting, foraging, and dispersal; degree of fragmentation); the current number of pairs in the project area; the reproductive success of breeding pairs; the expected time to regenerate sufficient habitat to support an effective population in a particular area; consistency of the action with the intent of the ISC Plan, recovery plan, or other conservation plans; geographic considerations; and local and regional problems. The analysis should also consider the affect of the action on habitat that was not included in critical habitat, as well as the affects on critical habitat from actions planned outside the designated area.

Analysis of impacts to individual units must consider the effects to the local area (both the unit and surrounding units), any definable sub-area (e.g., province), and the overall range of the species. The Service has developed biological narratives describing the role, condition, and value of each individual unit, as well as the conditions and problems associated with provinces and subprovinces (USFWS 1991e). To help in consideration of how actions affect local and provincial stability, these narratives contain an explanation of the interrelationships among units, local areas, and provinces.

Consultation Process

Section 7 consultation for critical habitat will focus on the effects of actions on owl habitat whether or not it is currently occupied. The presence or absence of individual spotted owls or pairs of spotted owls will not factor into the determination of actions that trigger section 7. Any action that may affect critical habitat will trigger section 7 consultation.

The requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review necessary to evaluate jeopardy and incidental take. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or its critical habitat. Federal agencies are responsible for determining whether or not to consult with the Service and should consider a number of factors when determining whether any proposed action may affect critical habitat. The Service will review the action agency's determination on a case-by-case basis and will or will not concur whether the action may adversely affect critical habitat, as appropriate. To the extent possible, agencies should consult on a programmatic basis (especially for multiple actions such as timber sales).

The Service will consider the effect of the proposed action on the primary constituent elements along with the reasons why that particular area was determined to be critical habitat. The trigger to initiate section 7 consultation (under adverse modification) is any action that may affect any of the four primary constituent elements of critical habitat or reduce the potential of critical

habitat to develop these elements; this is independent from any action that would affect known individuals. The evaluation should also take into consideration what happens outside of critical habitat since projects outside of critical habitat may also impact habitat within critical habitat. It should also consider what effects the action may have on other adjacent critical habitat units, the local area as defined by the Service, and the province or subprovince.

A number of Federal agencies or departments fund, authorize, or carry out actions that may affect lands the Service is designating as critical habitat. Among these agencies are the Bureau, Forest Service, Department of Defense, Bureau of Mines, Corps of Engineers, Bureau of Reclamation, Federal Energy Regulatory Commission, and Federal Highway Administration. The Service has identified numerous activities proposed within the range of the northern spotted owl that are currently the subject of formal or informal section 7 consultations. These include the Forest Service's and Bureau's land management plans (e.g., the Forest Service's spotted owl environmental impact statement), annual timber sale operations, and other more localized projects, such as hydroelectric developments; road, trail, and powerline construction; land exchanges; resort development; and a number of smaller actions (e.g., campground construction). A more complete list is contained in the Service's administrative record.

Examples of Proposed Actions

For any final regulation that designates critical habitat, section 4(b)(8) of the Act requires a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Destruction or adverse modification of critical habitat is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Activities that disturb or remove the primary constituent elements within designated critical habitat units might adversely modify the owl's critical habitat. These activities may include actions that would reduce the canopy closure of a timber stand, reduce the average dbh of the trees in the stand, appreciably modify the multi-layered stand structure, reduce the availability of nesting structures and sites, reduce the suitability of the landscape to provide for safe movement, or reduce the abundance or availability of prey species.

In contrast, activities that would have no effect on the critical habitat's primary constituent elements almost certainly would not adversely modify the critical habitat. However, even though an action may not adversely modify critical habitat, it may still affect spotted owls (e.g., through disturbance) and, therefore, be subject to consultation under the jeopardy standard of Section 7 of the Act, as determined after consideration of the aforementioned factors.

Areas designated as critical habitat for the spotted owl support a number of existing and proposed commercial and noncommercial activities. Some of the commercial activities that may affect spotted owl critical habitat include timber harvest, salvage activities, sand and gravel extraction, mining (e.g., open pit), land disturbance activities associated with oil and gas leases, snag creation/removal, construction of hydroelectric facilities, geothermal development, and construction of alpine ski areas and associated resort facilities.

Commercial activities not likely to destroy or adversely modify critical habitat include limited livestock grazing and various site-specific activities such as scenic tours and cavern exploration. Conducting owl surveys would not be likely to destroy or adversely modify critical habitat.

Non-commercial activities are largely associated with recreation and are not considered likely to adversely affect critical habitat. Such activities include hiking, camping, fishing, hunting, cross-country skiing, off-road vehicle use, and various activities associated with nature appreciation. Additional activities include "personal use" commodity production, such as mushroom and plant gathering, Christmas tree cutting, and rock collecting. These activities are also foreseen as not having any adverse effect on critical habitat.

Expected Impacts of Designation

The Service will use management guidelines when finalized by the Recovery Team during consultation to evaluate proposed actions in critical habitat. Until formal recovery goals and management guidelines are developed by the Recovery Team, the Service anticipates using the ISC Plan and other factors described in this document as a basis for determining the level of allowable timber harvest or other activities that affect owl habitat within critical habitat.

At this time the Service assumes that the Forest Service and Bureau will continue to manage the HCAs as recommended by the ISC. The Service expects that many proposed activities within HCAs that are also designated as critical habitat would be inconsistent with the long-term development of large suitable habitat blocks and would, therefore, likely result in destruction or adverse modification of critical habitat. Proposed actions that are consistent with the ISC recommendations for activities within HCAs would not likely destroy or adversely modify critical habitat. All such determinations will be made on a case-by-case basis during section 7 consultation.

Timber harvest or other actions proposed in critical habitat units, but outside HCAs, may or may not adversely modify critical habitat, depending on the current condition of the area and the degree of impact anticipated from implementation of the project. The potential level of allowable harvest or habitat reduction in the non-HCA portions of critical habitat units will vary over time for each unit, depending on local and provincial owl populations and habitat conditions and will be determined on a case-by-case basis during section 7 consultation, although meeting the intent of the 50–11–40 rule would be insufficient in most cases.

To avoid or reduce conflicts, the Service recommends that timber harvest or other actions be considered for the forest matrix outside critical habitat before consideration is given to placement of sales within the HCA or non-HCA portions of critical habitat. Variations within and among provinces (e.g., existing habitat quality and quantity, distribution of existing habitat, etc.) may lead to differences in near- or long-term protection strategies and may affect the focus of planning and section 7 review. Changes to HCA boundaries as a result of implementation of a recovery plan or other similar plan may affect how actions are treated in section 7.

Under this scenario, the net effect of the designation of critical habitat will be a reduction in harvest that falls somewhere between the effects of no harvest (as recommended for HCAs) and the application of the 50–11–40 rule. This impact will vary over the range of the owl. The potential impact of section 7 may also vary depending on the effect of the results of the exclusion of acres due to high economic costs. In some cases these areas may have been

reduced to the point where further timber harvest or habitat reduction would likely result in destruction or adverse modification of critical habitat.

Given this approach, the Service envisions that, as habitat within critical habitat begins to recover or the need for near-term protection of suitable habitat adjacent to HCAs decreases, increasing levels of harvest will be allowed within critical habitat. Eventually, few if any restrictions above 50–11–40 may be necessary in critical habitat outside of HCAs, once habitat within the HCAs has fully recovered and become occupied by owls. The Service expects that these assumptions may change as the recovery plan is completed and implemented. Restrictions on the levels of activities within HCAs may decrease as well as more is learned about maintaining owls in managed forests.

Reasonable and Prudent Alternatives

In cases where it is concluded that an action would likely result in the destruction or adverse modification of critical habitat, to the extent possible, the Service is required to provide reasonable and prudent alternatives to the proposed action in its biological opinion. By definition, reasonable and prudent alternatives allow the intended purpose of the proposed action to go forward, and remove the conditions that would adversely modify critical habitat; alternatives may vary according to local conditions, project size, or other factors. To reduce the potential for identifying such alternatives, the Service recommends that the agencies initiate discussions early enough in the planning process so that plans are not to the point where current alternatives may not be feasible and a greater number of options to reduce impacts may be available. Reviewing such actions as timber sales on a programmatic basis would facilitate this process.

Under this scenario, if adverse modification was anticipated, examples of possible reasonable and prudent alternatives that may be provided in a biological opinion include:

—Shift the planned action to another agreed-upon location outside or inside of the critical habitat unit;

—Maintain the quality of the habitat by minimizing fragmentation (e.g., through changes in sale layout);

—Leave sufficient habitat to support known (or an identified number of) pairs in a configuration that does not diminish the quality of the habitat for successful reproduction; and/or

—Implement forest management practices that are known to be compatible with spotted owls (e.g., those that retain certain habitat components or characteristics and those known to speed the development of habitat in young, even-age stands).

For actions that result in more moderate impacts, the Service may recommend minor modifications to the project's configuration. In the case of a proposed upgrade of a powerline right-of-way corridor, for example, the Service may recommend modified construction practices or that the corridor be expanded on one side of the existing corridor versus the other side to avoid impacts to habitat where the primary constituent elements are of higher quality. For projects that may result in more severe impacts, more substantial project changes may be necessary. For example, in the case of a multiple-unit timber sale, the Service may recommend that certain units be reduced in size, reconfigured, relocated, or dropped altogether to avoid impacts to primary constituent elements. The Service may recommend alternate timber harvest prescriptions in certain forest types.

No reasonable and prudent alternatives may be feasible for some proposed actions. For example, due to a lack of existing habitat or high levels of fragmentation, no level of harvest may be possible without resulting in the destruction or adverse modification of critical habitat. In this situation, the Service may issue an adverse modification biological opinion with no reasonable and prudent alternatives. The Service recommends that agencies initiate discussions, especially for timber sales, at the earliest opportunity to help avoid this type of situation.

Some activities could be considered a benefit to spotted owl habitat and, therefore, would not be expected to destroy or adversely modify critical habitat. Examples of activities that could benefit critical habitat in some cases include protective measures such as wildfire suppression or forest-pest eradication (e.g., eastside forests), as well as silvicultural treatments that may improve spotted owl habitat. At this time, they should be evaluated on a case-by-case basis.

Research on silviculture or other types of forest management practices may negatively affect critical habitat. However, the information that may result from such research may offset the perceived impacts of the action. Wherever possible, research should be conducted outside of critical habitat units, coordinated throughout the subspecies' range, and based upon an approved long-term strategy. In some cases, existing experimental or research forests are included in critical habitat. Although the effects of timber harvest in these areas would also be of concern, it is expected that the conservation value to be gained from permitted research activities may offer mitigating circumstances.

In general, those activities that do not remove components of habitat for spotted owls or their prey species are not likely to destroy or adversely modify critical habitat. Each proposed action would be examined under section 7 in relation to its site-specific impacts. The involved Federal agencies can assist the Service in its evaluation of proposed actions by providing detailed information on the habitat configuration of a project area, habitat conditions of surrounding areas, and information on known locations of spotted owls.

Lands both inside and outside of critical habitat are still subject to section 7 consultation on the jeopardy standard and to section 9 take prohibitions for their effects on owls. The Service envisions that the role of all landownerships in the conservation of the owl outside of critical habitat units will be addressed through section 7, the HCP process, the recovery planning process, and other appropriate State and Federal laws.

Conservation Measures on Non-Federal Lands

All non-Federal lands have been excluded from the designation of critical habitat. If an action that is committed by a non-Federal entity affects spotted owls, that action would be subject to review under Section 9 of the Act. Section 9 prohibits intentional and non-intentional "take" of listed species and applies regardless of whether or not the lands are within critical habitat.

There may be some instances where activities outside of critical habitat on non-Federal lands may affect critical habitat. For example, a private party may require a right-of-way permit through critical habitat for an action on private lands. In this type of case a section 7 consultation may be required on the right-of-way permit because the action requires Federal involvement. The Service does not expect that there will be many of these type of situations. However, if a biological opinion is required, recommendations will be provided to help avoid impacts to critical habitat consistent with those examples identified in the previous section.

Examples of Forest Practices

Recent data gathered through research on privately-owned industrial

timberlands in California have suggested that, in some cases, certain silvicultural practices may be compatible with maintenance of viable spotted owl populations and may contribute to delisting. Although there may be significant benefits to be gained from changing current forest management practices, several concerns exist that need to be addressed. First, there are no long-term data on reproductive rates. Therefore, it is possible that the rates observed in the past few years may be a result of high points in prey cycles, or other factors that may vary considerably over time. Another concern that urges caution is that, while the selectively-harvested areas may show adequate owl densities, those densities could be a result of owls being displaced by clearcutting and being forced into the best remaining habitat (those areas with residual trees). While those owls may continue to live, and some may reproduce, there are no data to conclude that a spotted owl population can be sustained in such habitats in the long-term. In addition, other factors, such as rates of fledging success, juvenile dispersal success, and longevity of breeding adult pairs, need to be researched to determine the impact of changes in forest management practices on them.

Although scientists familiar with spotted owl ecology cite several reasons that the high densities reported on selectively-harvested timberlands should be viewed with caution, the Service believes that opportunities may exist for forest management that is compatible with maintenance of owl habitat and owl populations. For example, forest management practices could provide forest stands of different ages that exhibit appropriate habitat characteristics for the owl. These practices should ensure that sufficient younger-aged stands mature at an adequate rate to provide replacement habitat for older stands lost due to logging or natural causes and could provide an adequate quantity and distribution of large contiguous blocks of older forest needed for spotted owls.

There are a number of practices associated with selective timber harvests that may maintain suitable habitat conditions while yielding forest products, or at least minimize the time a stand takes after harvest to regain the attributes of suitable spotted owl habitat. Not all of the following practices can be applied in all conditions.

(1) Maintain conditions:

—Attempt to maintain a multi-layered, closed canopy by retaining pockets of scattered dominant and codominant trees in the overstory, and retaining enough hardwoods and smaller conifers to maintain an understory.

(2) Minimize impacts to habitat:

—Retain large snags and standing culls to provide the decadent component important to prey species and to provide nest sites;

—Retain and/or create large dead and down material to provide food and cover for spotted owl prey species;

—When preparing a site for planting, minimize hot burns that destroy soil structure through elimination of organic matter from the upper soil horizons and that remove most or all of the duff layer above the soil; and

—When regenerating a harvested area, plant a mixture of species that most closely approximates the original stand composition; avoid monotypic stands. Minimize control of hardwoods or, if hardwoods must be suppressed to allow seedling establishment, allow hardwoods to continue growing as soon as seedlings are established.

Several long-term demographic studies are underway on agency and managed industrial timberlands. It is hoped that many of the uncertainties described above will be resolved if the studies can continue for 5 to 7 years. At that time, the Service can re-evaluate what, if any, harvest practices are compatible with long-term maintenance of a viable spotted owl population.

Examples of areas where conservation efforts may prove successful include some private lands (primarily in the redwood-dominated forests of the coastal region) in California. In this region owls have been observed nesting in stands that had acquired characteristics associated with owl presence in as little as 40 to 60 years (Pious 1989). Redwood-dominated forests develop habitat characteristics more quickly following harvest because redwoods exhibit fast growth (redwoods are a stump sprouting species); this region of California receives high precipitation levels augmented by coastal fog, during a long growing season; and the habitat often possesses an understory of other conifers and hardwoods.

These forest growing conditions and an abundant prey base in that part of the subspecies' range lead to the development of suitable nesting, roosting, and foraging habitat in a much shorter time following harvest than in the remaining portion of the owl's range. Although the stability and reproductive success of these owls over time is not well understood, the Service believes that an owl population can be maintained throughout the Redwoods region. In this portion of California, several timber companies are working with the Service in the section 10 HCP process. Two efforts have been completed that the Service believes will be successful in avoiding future conflict.

In other parts of the owls' range in California, some selective harvest techniques on non-Federal lands may be compatible with spotted owls. To address these areas, the State of California and a number of private companies have initiated the HCP process to develop timber harvest plans that are more compatible with owl conservation. The Service believes that the plans developed through this process may provide a basis for maintaining owls on private lands.

The Yakima Indian Nation in Washington practices predominately selective harvest methods. Similar to the methods in some parts of northern California, these methods may also be compatible with maintenance of an owl population. The Yakima Nation is in the process of conducting research on the effect of timber harvest practices on spotted owls to refine an owl management plan for their lands. The Service expects the Bureau of Indian Affairs and Indian Nations to continue to work towards the development of forest management plans on tribal lands that are compatible with spotted owls.

However, more data are needed to ascertain the compatibility between types of forest management and long-term spotted owl reproductive success, particularly if timber harvest is to be considered for designated areas such as HCAs (this should be done outside of HCAs until further data are available and supportive). Agencies should work with industry to continue to study the affects of different harvest techniques on owl presence and reproductive success to determine if (1) new harvest methods would shorten the time needed to produce suitable habitat, (2) if there are timber harvest prescriptions that would be more compatible with northern spotted owls, (3) whether the high owl densities reported by researchers on industrial timberlands can be sustained for the long-term, and (4) whether reproductive rates of spotted owls on managed forests are at a level that can be expected to sustain a viable owl population.

Biodiversity and Ecosystem Protection

The habitat of the northern spotted owl represents a unique ecosystem of diverse plant and animal species. Most attention has been directed toward

protection of the spotted owl, but this is only one of several hundred vertebrate species occurring in the Pacific Northwest (Bruce *et al.* 1985, Ruggierio *et al.* 1991). Among ecosystems in North America, the Pacific Northwest has one of the highest number of bird species, the most bird families (Harris 1984), the second highest number of mammal species (Raphael 1990), and many endemic or relic amphibian species (Bury 1988, Welsh 1990). This species richness and abundance depends to a large extent on the presence of mature and older forests (Ruggierio *et al.* 1991).

These forests play a major role in our environment (see Schamberger *et al.* 1991 for summary). Redwood and Douglas-fir forests accumulate more biomass than tropical rainforests (Franklin 1988). Reduced rotation rates and conversion to younger forests will lead to forests with closed single-layered canopies, smaller trees of similar size, less ground litter and snags, and a more simplified ecological system (Hansen *et al.* 1991). Research indicates that managed stands have fewer species and lower abundance of wildlife than older forests (e.g., Bury 1983; Raphael 1984, 1988; Corn and Bury 1989).

The forests provide protection to the soils, particularly on steep slopes, and maintain higher water quality with lower sediment yield. For example, prescribed burning of slash and cull logs reduces available cover by up to 95 percent (Bartles *et al.* 1985, Hartman and Scrivener 1990). The loss of cover exposes the soil to erosion and reduces or eliminates cover for terrestrial and aquatic species.

Rotation length also impacts the amount of soil loss. The more an area is logged, the more frequently the soil is exposed to erosive elements. For example, Frissell (1991) stated that increased erosion occurs for 15 years following logging. Thus a 100-year rotation exposes the soil 15 years out of 100 (15 percent), whereas a 60-year rotation exposes the soil to erosion 15 years out of 60 (25 percent of the time). Construction of logging roads increases the frequency of land mass failures and diminishes ecosystem stability, as evidenced by temporal fluctuations in abundance of aquatic fauna (Lamberti *et al.* 1991). For example, Amaranthus *et al.* (1985) reported that almost 1.5 million cubic yards of debris slide erosion occurred over a 20-year period on only 14 percent of Siskiyou National Forest, with an erosion rate of approximately ½ cubic yard per acre per year across the entire watershed; roads occupied 2 percent of the area inventoried, yet represented 60 percent of the slide volume. They reported that logging on Federal lands was associated with a 6-fold increase in slide volume, whereas adjacent private logging was associated with a 45-fold increase. Increased soil erosion has been reported in other studies as well (Furniss *et al.* 1991, Rice *et al.* 1979).

Huppert *et al.* (1985) note that environmental manipulations that simplify habitat have a direct, negative impact on fish population structure and abundance. Increased erosion rates and sedimentation decreases the productivity of aquatic systems, which in turn reduces fish populations, and results in smaller numbers of fish. Timber harvest also increases water temperature and may reduce dissolved oxygen levels when excessive organic litter enters streams (Hartman and Scrivener 1990, Hicks *et al.* 1991, Sedell and Swanson 1984).

Unlogged forests provide protection to soils, particularly on steeper slopes, and maintain higher water quality with lower sediment yield than logged sites. Anderson and Olson (1991) note that more than 50 percent of the large pool habitat for anadromous fish in the Northwest outside wilderness areas has been lost over the past 50 years. This has resulted in decreased survival in salmon and steelhead trout fry and results cumulatively in decreased populations of these fish (Phillips *et al.* 1975, Hicks *et al.* 1991, Hartman and Scrivener 1990).

Fish stocks have dramatically declined in the Northwest (Nehlsen *et al.* 1991); at least 106 populations of salmon and steelhead have already been extirpated on the West Coast. Many declining fish populations are found in or downstream from areas where logging and road building are evident (Hartman and Scrivener 1990). The river systems draining Northwest watersheds contain an abundance of salmon species as well as other instream fauna and flora. The designation of critical habitat is expected to reduce the amount of logging and thereby provide benefits in the form of reduced soil erosion, decreased sedimentation in streams, and increased habitat for these species.

Critical habitat designation may also help maintain important nesting habitat for migratory birds (e.g., neotropical migrants), many of which are seriously declining in numbers. Current international efforts to maintain tropical forest habitat in Central and South America may be enhanced by complementary efforts to maintain suitable habitat for species that nest in forests of the Northwest.

Designation of critical habitat for the northern spotted owl may benefit these and other forest species, particularly those that depend upon large blocks of older forest and occur within the designated areas. In 1990, the Service identified species that were candidates for listing as endangered or threatened and were found within the HCAs delineated by the ISC. The Service has updated that list to include those species that may benefit from designation of critical habitat for the spotted owl (a list is maintained in the administrative record). About 60 listed, proposed, and candidate species have been observed within areas designated as critical habitat. Although not all of the known locations of these species are found within critical habitat units, review of Federal actions under Section 7 of the Act may be of benefit to these species. Designation may be most beneficial to the marbled murrelet and salmon stocks that inhabit or depend on these areas, thus helping to reduce conflicts associated with these species.

The Scientific Panel has also identified areas that are important to maintaining such an ecosystem network within the range of the owl (Johnson *et al.* 1991). This effort addressed the owl and numerous other forest species and processes, and includes more acreage to accommodate these components of the ecosystem. For example, they concluded that current forest plans were inadequate to protect streams and salmon stocks in the Northwest. The Service has not had the opportunity to thoroughly review the product of this effort to determine its relationship to other potentially listed species; initial comparison would equate this critical habitat rule with alternative 6 to 8 out of the list of 14 alternatives (with number 14 being the most protective for all species).

Designation of critical habitat will contribute to the conservation and management of the Northwest's forests as one component in the management and maintenance of characteristic species and processes. Research is beginning to identify the importance of maintaining ecosystem processes upon which the stability of the system depends. In turn, the species and populations depend on that stability. Such functions as hydrology, bank stability, nutrient cycling, predator/prey cycles, fisheries restoration (e.g., salmon), and local microclimates are all interdependent. They can benefit from conservation approaches that focus on unity of the ecosystem as opposed to a piecemeal approach that does not take

into account the interrelationships of all processes.

Preservation of separate blocks of habitat, however, will not by itself contribute to ecosystem stability. Linkage among the blocks of habitat is a necessary component. Critical habitat designation may contribute to regional biodiversity by protecting natural ecosystems of sufficient size and quality to support native species, as well as protecting listed, proposed, and candidate species. Critical habitat may also help in retaining ecosystem values through a combination of preservation, conservation, and compatible management of forest habitat with emphasis given to older forest values and characteristics.

However, these are dynamic and complex issues that include both spatial and temporal components that are not addressed by the designation of critical habitat alone. Further research and evaluation of data will be necessary to understand the interrelationships of these species to older forests and whether management for the spotted owl will adequately provide for their conservation, perhaps reducing the need for listing of proposed and candidate species.

Summary of Comments and Recommendations

In the August 13, 1991, proposed rule and associated notifications, the Service requested all interested parties to submit factual reports or information that might contribute to the development of this final rule. On October 8, 1991, the Service published a notice (56 FR 50701) to correct errors in the legal descriptions contained in the August 13 proposal; on November 12, 1991, the Service published a notice (56 FR 57503) correcting two editorial errors on references contained in the August 13 proposal.

The public comment period was open from August 13, 1991, through October 15, 1991. During that period the Service conducted four public hearings on this issue at the following locations: Redding, California on September 9, 1991; Medford, Oregon on September 11, 1991; Olympia, Washington on September 17, 1991; and Portland, Oregon on September 19, 1991. The Service accepted testimony from the public from 1 to 4 p.m. and from 6 to 9 p.m. on each of those days. The Service announced the dates, times, and locations of the public hearings in the August 13, 1991 proposed rule (56 FR 40001). Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and asked to comment. In addition, on August 21, 1991, the Service published notices in the Olympia Olympian, the Oregonian, the Medford Mail Tribune, and the Redding Record Searchlight newspapers announcing the publication of the proposed rule, and the dates, times, and locations of the public hearings. All meetings were attended by at least one member of the Regional Directorate.

During the 60-day comment period, the Service received approximately 5,800 written comments. In addition, 286 people testified at the 4 public hearings. The Service received comments from the Forest Service, Bureau of Land Management, National Park Service, other Federal agencies, several elected officials, State agencies, environmental organizations, and representatives of the timber industry. About 56 percent of the comments were supportive of the proposal.

In addition, following the close of the public comment period on the May 6, 1991, proposed rule, the Service received nearly 10,000 letters and postcards. The Service did not consider these comments because the additional comment period began with the publication of the August 13, 1991, proposal, and the comments received between June 5, 1991, and August 13, 1991, pertained to a proposed rule that was out of date. The majority of the comments were from the general public. The Service appreciates the interest and concern expressed in these letters, however, very little biological or commercial data was provided during this or earlier comment periods.

Most of the letters and oral testimony received repeated issues raised in response to the May 6, 1991, proposal. The Service is not repeating those issues here, except where we have received new information that adds to or changes our earlier response. Members of the public interested in those issues previously raised should examine the "Summary of Comments and Recommendations" section, beginning on page 40020 in the August 13, 1991, proposal (56 FR 40001). The new issues raised during the public comment period announced in the August 13, 1991, proposal, whether written or oral are discussed below.

Landownership Issues

Issue 1: Several members of the public objected to the exclusion of the private lands from the August 13, 1991, proposal. They indicated that there was no legal basis for such a decision, that removal of the private lands limited recovery team options, and suggested that these lands be included in the final rule. Some members of the public saw the exclusion of private lands and inclusion of additional Federal lands in some areas as deceitful.

Service response: The Endangered Species Act requires that the designation of critical habitat take into consideration "* * * the economic impact, and any other relevant impact * * *." and make a determination as to whether the benefits of excluding those areas outweigh the benefits of including them so long as the action will not result in the extinction of the listed species. The Service made the decision to exclude non-Federal lands because it felt that the conservation benefits attributable to those lands did not outweigh the costs of their inclusion.

The information that the Service has indicates that many of these lands (primarily private) do not contain owl habitat and have very few spotted owls, although these lands may be important to the long-term recovery of the owl. In other areas, such as northern California where there is a fairly large amount of owl habitat on private lands, the State and private entities are currently involved in regulatory processes that will result in the development of HCPs for owls that will be of greater benefit than could be derived through critical habitat.

It is important to remember that excluding these areas from critical habitat does not exclude them from compliance under other legal requirements of the Act. They are still fully subject to section 7 consultation (jeopardy) and section 9 (take prohibition) requirements regardless of whether an area is critical habitat.

Issue 2: Many individuals still felt that the Service had designated too much habitat and indicated that the removal of 3 million acres indicated that the Service had erred in its first proposal and probably erred in its second.

Service response: The Service proposed designation of critical habitat for those areas that met certain criteria. Since critical habitat is not a plan to manage the owl or any species, the concept of "too much land" does not directly apply. The northern spotted owl has already lost a significant portion of its habitat, such that remaining habitat that meets the criteria should be identified and provided with additional protection to offset threats to extinction. As stated in the response to the above issue on excluding private lands, the Act also requires that consideration be given to economic or other factors that may influence the decision to include areas in critical habitat. The Service made this difficult decision and excluded over 4

million acres of lands from the designation. Although these lands are not part of the critical habitat proposal, they still are important in owl conservation.

Issue 3: The Service should specifically exclude private lands by legal description. Such areas that are subsequently acquired by a Federal agency, would not become automatically designated as critical habitat. Excluding private lands generically is ambiguous, in that such lands when acquired by a Federal agency should not be thought of as designated critical habitat unless the Service follows the appropriate regulations to designate these areas.

Service response: It is mechanically impossible for the Service to specifically exclude all private lands by legal description, particularly since many of these areas are intermingled with Federal lands and are less than 40 acre parcels. To accomplish this the Service has on file in its administrative record the U.S. Geological Survey topographic quadrangle maps. These show the actual boundaries of each critical habitat unit. If land exchanges are initiated, the activity would need to be reviewed under section 7; future decisions on including these areas in critical habitat would have to be weighed at that time.

Issue 4: The Service should withdraw the State-owned lands, particularly in southwest Washington. The commenters generally indicated that there is no biological difference between the habitat on these lands and adjacent private lands, and concluded that the Service's decision to exclude private lands but retain State lands was arbitrary. The State of Washington asked why private lands in these areas were not included. Some individuals also questioned the Service's belief that the States should have more responsibility with respect to carrying out the purposes of the Endangered Species Act than private entities, referring to a lack of any legal basis for such an opinion.

Service response: Although State laws provide for wildlife protection, some State lands were retained in the August 13 revised proposal because they have particularly high value for the conservation of the owl. Most were identified in the ISC Plan as recommended HCAs since these lands provide essential "stepping stones" for maintaining nesting habitat in a well-distributed manner throughout the range of the owl. Other State lands, contiguous with Federal lands, were included because they have some of the only remaining habitat outside of Federal lands in key areas, such as the Olympic Peninsula.

However, the Service, in further reviewing this issue, decided to exclude State lands because the economic and other relevant impacts exceed the benefits of designation. Most regulatory protection for critical habitat is provided through section 7 of the Act, which has little, if any, applicability to State lands. Further, since the majority of owls and owl habitat are found on Federal lands, the Service concluded that exclusion of these lands will not result in the extinction of the owl.

Issue 5: The Service failed to justify the exclusion of the tribal lands.

Service response: The situation on tribal lands is similar to that on other non-Federal lands. The Service used the same logic applied to private and State lands in determining to exclude tribal lands in the designation.

Issue 6: The Service should have recognized the sovereignty of the Indian nations when it excluded tribal lands.

Service response: The Service expects that all landowners, regardless of their status, will comply with the Act and will contribute to the conservation of the northern spotted owl.

Issue 7: The Service should exclude the Oregon and California lands, and should return the management of these lands to the counties.

Service response: The Service does not have the authority to transfer the management of any lands managed or owned by Federal or non-Federal entities to other entities. On the other hand, the Endangered Species Act applies to all landownerships and the Service carefully reviewed the biological situation before making a decision on the areas of habitat that should be included in critical habitat.

The majority of owls and owl habitat (about 85 percent) are currently found on Federal lands. These lands are particularly important in the State of Oregon because very little owl habitat remains on non-Federal lands in that state. The Oregon and California lands, managed by the Bureau, are more crucial to owl conservation than many other lands. The areas selected for inclusion in critical habitat fully met the Service's criteria for inclusion and help form the basis for owl conservation in Oregon. As a result of the exclusion process previously discussed, the Service made the decision to reduce the amount of lands in critical habitat for some Oregon counties that were affected the most by the designation. This was consistent with the mandates of the Act.

Issue 8: The Service received two petitions requesting that the counties of Douglas and Jackson, Oregon, be exempted from the mandates of the Endangered Species Act.

Service response: The Service has considered the portion of these petitions that refer to critical habitat and, as requested in the petitions, has considered the economic costs of designating critical habitat in those areas. As a result of this process and in addition to the earlier decision to remove private lands from the proposal, the Service reduced an additional amount of acres from Forest Service and Bureau lands in these counties. That has reduced the expected economic impacts from designating critical habitat in those two counties (similar decisions were also made in other affected counties).

The Service does not have the authority to exclude anyone from compliance with Federal laws. Further, the exclusion of areas from critical habitat does not exclude these areas from consideration under other legal obligations of the Act, such as sections 7 and 9. The Recovery Team is considering the roles of the different landownerships in its deliberations and will describe these in its draft plan.

Issue 9: The Service should clearly exclude all activities that were approved prior to the designation of critical habitat.

Service response: In carrying out the requirements of the Act to consider the economic and other relevant factors, the Service made the decision to exclude from critical habitat all sold and awarded timber sales (as of the date of the August 13 proposal) and to exclude all existing projects that are either in place or that have thoroughly completed all their Federal and State permitting processes as of the publication date of this final rule. The Service made the decision to exclude these activities because it felt that the conservation benefits gained by regulating these activities did not outweigh the costs. An example of such an exclusion is sold and awarded timber sales where the costs for the Federal government to buy back these sales outweighs the benefits of designating these areas as critical habitat. However, any changes in these activities are not excluded and would require Service review. In addition, excluding these activities from critical habitat does not imply that they are no longer subject to sections 7 or 9 of the Act. They must still undergo review and be in compliance with the Act.

Issue 10: A number of commenters requested either site-specific additions to or deletions from critical habitat. A

number of suggestions for more effectively designating critical habitat in certain areas, such as specific ranger districts, were provided to the Service by persons familiar with site-specific conditions.

Service response: These cases generally involved rather major changes in critical habitat units. The Service has evaluated each of these specific requests and has included, within its administrative record, written explanations of whether or not the recommendation was accepted and recommendations for the future treatment of some of the requested major changes. In order to make such major adjustments, the Service would need to publish another revised proposal to allow for the greatest possible public input. The Service can revise critical habitat at any time in the future, by following the standard procedures used to designate critical habitat. In addition, the Service will reevaluate its designation following the completion of a recovery plan for the owl, and at that time will very likely consider some of these recommendations.

The Service intends to work with land management agencies and the Recovery Team, through section 7 consultation, to refine the management direction for critical habitat. Publication of this final rule does not eliminate flexibility in managing areas for spotted owls.

General Issues

Issue 11: The Service did not consider the comments received on the May 6, 1991, proposal. Many members of the public seemed to be frustrated and questioned the worth or value in providing comments again. Many people pointed out that 88 percent of the commenters on the May 6 proposal opposed the designation and reminded the Service that in a democracy such overwhelming opposition should be sufficient to stop an action, yet the Service has issued a second proposal. Some indicated that they did not want to be told that the Service must adhere to the provisions of the Endangered Species Act and other regulations.

Service response: The Service has considered input from the public and appreciates the effort required to write letters and present oral testimony. All of the information presented was considered in the development of both the August 13, 1991, proposal and this final rule. The Service's intent has been to publish a final rule that is as accurate and effective as possible. The Service is bound by laws and regulations and cannot violate these mandates because some members of the public object. Furthermore, individuals who submit comments on an issue very likely have rather strong feelings on that issue and sometimes submit more than one letter or testify at more than one hearing. The Service does not regard the relative proportions of various comments received as being indicative of the views of the public as a whole, nor is this a relevant factor under either the Endangered Species Act or the Administrative Procedures Act. The comments received on the August 13, 1991, proposal that were in favor of the proposed action slightly outnumbered those against.

Issue 12: The Service should not have used the ISC Plan to designate critical habitat because that plan did not use the best available scientific information. The individuals involved in the ISC Plan merely used their personal judgment when developing the plan. The ISC accepted the plan as valid because they could not disprove it as a hypothesis. Some commenters challenged specific critical habitat units and unit spacing patterns, indicating that the Service had violated the basic rules established by the ISC (e.g. critical habitat units in Douglas County).

Service response: The ISC was comprised of the most knowledgeable owl experts in the Pacific Northwest. Their plan was thoroughly peer reviewed by nationally respected scientists and is considered a scientifically credible and authoritative document that will play a major role in spotted owl conservation. The HCAs were considered to be the cornerstone of the ISC Plan and they are presently being adhered to by the Federal land management agencies. As a result, the Service accepted the HCAs because they represent the best scientific efforts available and are essential to the conservation of the species.

However, the ISC Plan contains a second important component that is an integral part of the ISC strategy, the 50–11–40 rule to govern forest management in the forest matrix outside of the HCAs. Critical habitat is not a plan and does not contain this second component. The Service's intent in not violating ISC rules on spacing was to ensure that to the extent possible critical habitat units would not be spaced further apart than the distances recommended by the ISC. Although the Service assumes that 50–11–40 or some other credible rule will be applied to these lands, reducing distances between critical habitat units would improve short-term linkage.

Issue 13: The Service's approval of Sierra Pacific's management plan suggests that critical habitat is unnecessary.

Service response: Sierra Pacific submitted a forest management plan that was intended to show how their forest practices would not result in "take" (under section 9) of spotted owls. The Service concurred that activities conducted in accordance with that plan will not result in take of owls. This does not imply that this is a plan for managing viable populations of owls. However, critical habitat is not a management plan, and a plan of this nature does not factor into the biological consideration of critical habitat. The Service did, however, take this type of activity into account when it made the decision to exclude private lands from critical habitat due to economic and other considerations.

Issue 14: The Service should consider the Industry's plan for conserving spotted owls in lieu of designating critical habitat.

Service response: The Recovery Team for the Northern Spotted Owl, designated by the Secretary of the Interior, is reviewing that plan (Wildlife Committee 1991) to determine its relevance to the recovery of the owl. The Service believes that this is a more appropriate forum for review of this type of document at this time since it focused on owl management; the plan generally focused on reserved areas which are already protected. The ideas and concepts in the document were brief and had not been peer-reviewed, and the type of information useful to consideration of critical habitat was not provided. Until the recovery planning process is complete and the Recovery Team has had a thorough opportunity to review the Industry's plan, the usefulness of that or other documents in owl conservation is inconclusive.

Issue 15: The Service should more carefully describe the primary constituent elements and should describe the elements contained in each critical habitat unit.

Service response: The Service concurs with this request and the final rule has more clearly stated the criteria and their application. Information on the elements contained in each individual critical habitat unit are included in the individual unit narratives (USFWS 1991e and contained in the Service's administrative record for this decision).

Issue 16: The Service should only designate currently occupied areas as critical habitat.

Service response: The Service focused on existing and currently occupied habitat in developing this rule. However, the Act clearly states that areas in need of special management (inside or outside of the current range of the listed

species) can be included in a designation of critical habitat. In reviewing the situation surrounding the northern spotted owl, the Service made the decision that in some areas (e.g., areas of concern) there was a need to include habitat that was not currently occupied or was not of similar quality to other habitat included. Recovery of the owl is dependent upon improvement in the quantity, quality, and/or arrangement of habitat. Thus, currently unoccupied habitat must be allowed to achieve suitability for owls.

Issue 17: Critical habitat is not legally determinable, because the agencies have not agreed upon a consistent definition of suitable habitat. The expansion of the definitions of what constitutes habitat for the owl calls the decision to list the owl into question, since habitat loss was the basis for that decision.

Service response: Forests naturally vary due to a number of factors, such as site productivity, microclimate, soil condition, rainfall, fire, and disease. They further vary as a result of forest practices. As a result, the use of the term suitable to adequately describe one set of consistent parameters throughout the species range would be impossible and incorrect. However, the term can be used generically to describe owl habitat in terms of general characteristics. Habitat that currently contains known pairs of reproducing owls can be clearly identified on existing maps. This is what the Service concentrated on in developing its proposal to designate critical habitat.

There has always been considerable confusion over what constitutes owl habitat from old growth to second growth. Those terms are probably more misleading and misused than the term suitable. Suitable generally refers to nesting and roosting habitat which is typically older forest stands or mixed age stands with remnant older trees. Regardless of the age of the forest in which owls are found, the problem of habitat loss, habitat modification and fragmentation, and rapid and continual conversion to younger stands to a condition that does not support owls has been determined by the Service, the ISC, and other groups to constitute a threat to the survival of the spotted owl.

Issue 18: Modern road building and logging methods are less environmentally damaging now that they were in past decades, and the Service fails to take this into account in describing effects of logging and roads on regional water quality, fisheries, and biodiversity. You have not considered the beneficial effects of new forestry and alternative means of harvesting timber.

Service response: Frissell (1991) notes that, although it is anticipated that newer techniques will reduce impacts, these techniques are untested. He further states that (1) the newer techniques will still be environmentally damaging, and will be applied over a larger geographic area, resulting in continued degradation of watersheds and receiving streams; and (2) the remaining old growth is often located in steeper terrain so the risk of soil movement from road construction and tree removal is greater. Although newer techniques exist, they may not be applied in a widespread or uniform manner.

Issue 19: There is still an inadequate description in the rule as to what constitutes allowable activities in critical habitat. For example, timber harvest that is consistent with owl habitat protection should be permitted. The public is entitled to a more specific description about restrictions, and exactly what constitutes adverse modification of critical habitat.

Service Response: The Service agrees with this comment and attempted to provide more specific information. However, it is difficult for the Service to identify every type of action and not prejudge the outcome of section 7 consultation. As the land managing agencies work with the Service, together they can identify courses-of-action that will benefit the owl and maintain certainty within the timber communities.

Economic Issues

Issue 20: The Service is underestimating impacts by separating impacts from the listing process and from the designation of critical habitat.

Service response: The Endangered Species Act specifies that the listing of species should occur without consideration of economic costs, whereas the Act specifies that the designation of critical habitat should consider economic and other costs. Listing a species provides protection to that species under the jeopardy standard and incidental take whereas designating critical habitat provides additional protection through the adverse modification standard. These are intended to be separate standards to be addressed through section 7 consultation. The economic analysis clearly identifies the costs and benefits of these independent and incremental actions, and is not an effort to underestimate costs. The total cost of conserving the spotted owl is greater than the cost of designating critical habitat alone, and includes the costs of prior owl protection measures under other laws and costs resulting from listing under the Act, as well as the cost of designating critical habitat.

Issue 21: The Service uses an improper baseline from which to assess economic impacts. The Service should use the 1983–1987 period as the baseline. It is inappropriate for the Service to use the "Actual or Projected Final Plans Plus ISC Plan" as the baseline for analysis. This minimizes the effects of designating critical habitat.

Service response: This issue is further addressed in the Economic Analysis Report (USDI 1991a) and summarized in the final rule. The historically high harvest rates of the 1983–1987 period were not sustainable, and this is recognized in the Final Plans of the agencies. The structure of the economic analysis is to look at the expected effects in the future both "with" and "without" critical habitat designation. In the "without" scenario, timber harvest levels would be reflected in the agencies' final plans adjusted for the ISC which is the basis used by the Service to determine the level of impact when critical habitat is designated. The Federal agencies do not intend to continue harvesting at the higher 1983–1987 rates, and to use this as a baseline would be misleading.

Issue 22: The Service improperly assumes the implementation of all or part of the ISC report as a pre-existing condition.

Service response: The ISC was established primarily in response to existing and ongoing lawsuits that began before the listing of the owl; the ISC was not chartered to respond to the Act. Subsequent to the listing of the owl, the Forest Service stated that it would follow the intent of the ISC recommendations in their management plans, and the Bureau in the Jamison strategy agreed to implement, to the extent possible, recommendations of the ISC. Although the Bureau has recently changed its approach to owl management, it has not completed its planning activities. The ISC is correctly identified as a pre-existing condition that should be identified as a separate impact from the designation of critical habitat.

Issue 23: In reporting the costs of critical habitat designation only the "incremental" costs over and above the Final Plans plus ISC are mentioned as being attributable to critical habitat designation, but in using examples of recreational benefits the report uses all of the acres. If the ISC Plan was "in effect" for determining costs then it should also have been "in effect" for

determining benefits. If the Service uses an incremental analysis to address costs, then the same increment must be used to assign benefits.

Service response: The Service agrees with this comment and has revised the final economic analysis to reflect a discussion of incremental cost and benefit analysis. Costs and benefits should both be on the same basis to provide a correct comparison.

Issue 24: The Service should show the total impacts of not harvesting critical habitat areas. That is the most likely result of designation and it will effect management plans for the next 100 years, not just through 1995. The critical habitat proposal is just another set-aside that locks up land from human use.

Service response: The final economic analysis presents a realistic scenario of the future and assumes that some short-term harvesting will occur in the critical habitat areas outside the HCAs. The designation of critical habitat is intended to be a temporary measure to provide protection to the habitat so it can recover, and anticipates a reduced rate of harvest of older forests in the short-term. The option to harvest timber in these areas is not foregone, but rather is available in the future. Conversely, the option to harvest now is essentially an irreversible commitment of resources (at least a 100-year commitment) which precludes recovery of owl habitat. Effects will continue beyond 1995; this year was used as a point in time when full effects of the action would occur it was not intended to imply that effects would stop at that time.

Issue 25: The economic studies cited by the Service in its discussion of benefits have major flaws. They rely heavily on a controversial economic methodology called the "contingent valuation method," as well as the concept of nonuse values. These methods and concepts use no market data on which to base the estimation of benefits, instead relying on responses by individuals confronted with hypothetical situations who know they will never have to pay in any event.

Service Response: Though empirical applications of the contingent valuation method continue to be controversial, there is a growing body of evidence that supports the practical usefulness of resulting value estimates. In the past decade, an extensive body of literature has developed assessing the accuracy of the contingent valuation method (CVM) of estimating individual willingness to pay for the recreational use of environmental resources. Initial results were challenged on the grounds that what people say they are willing to pay, contingent on the availability of an environmental resource, represent behavioral intentions rather than a directly observable action or historical fact. More recently, the relationship between intentions and actual behavior has been submitted to systematic empirical investigation. Despite some continuing controversies and unsettled points, CVM studies of the recreational benefits of environmental resources have performed reasonably well when compared to the available empirical evidence from travel behavior, actual cash transactions, and controlled laboratory experiments. Levels of accuracy have been reasonable and consistent with levels obtained in other areas of economics and in other disciplines. Contingent valuation can be applied with confidence to estimate use value of nonmarket consumption, and the initial studies of nonuse preservation values held by the general population also are encouraging, i.e. not significantly different from psychological measures of preferences for forest quality. CVM and psychological studies of values and preference patterns yield scientific data that are testable by replication and other methods.

Contingent valuation is particularly appropriate for comparing benefits and costs of a proposed wildlife preservation program. The reason is that the decision is made in the present based on expectations about the future. CVM is *ex ante*, i.e., before the fact, in the sense that willingness to pay (WTP) responses represent behavioral intentions rather than *ex post*, i.e., after the fact, actions, which are less relevant to benefit-cost analysis of proposed programs.

Issue 26: Jobs are being lost because of a lack of a predictable Federal timber supply.

Service response: The unpredictable nature of Federal timber sales in the Northwest is an unfortunate effect of several Federal actions, including historic overharvest and the designation of critical habitat for the owl and recent court decisions. Once the critical habitat designation is complete, a recovery plan for the spotted owl adopted, and the court actions are resolved, Federal land management agencies will be able to determine a more predictable supply of timber from Federal lands.

Issue 27: There was inadequate discussion about social impacts.

Service response: The Service has added a section in the final Economic Analysis Report that reviewed existing studies as well as comments submitted by the public. A summary section was added to the final rule.

Issue 28: The Service is attempting to shift blame from owl conservation to mechanization and log exports; the effect of mechanization is misleading and automation will not continue to be a major cause of job loss in the future.

Service response: The Service recognizes that the economic impacts due to critical habitat designation are in addition to the impacts due to other factors, including mechanization and log exports. Mechanization has and will continue to result in job losses in the industry, but this is necessary if the timber industry of the Northwest is to remain competitive with other industry sectors. In the recent past, jobs have been lost at a rate of 1.8 percent per year, but this rate is expected to decline because many of the recent innovations have now been implemented in local mills. However, industry experts believe that job losses due to mechanization will continue at about 1.2 percent per year over the next several decades. Exporting logs from local communities also exports associated secondary processing opportunities (value added). However, in a free trade economy, there is a welfare gain when exporters receive a higher premium for their logs in the export market, thereby providing higher profit levels for domestic firms.

Issue 29: Reducing log exports will do little to help loggers. In 1990, the US imported into the United States more wood products than it exported, so it is clear that we are a net importer of wood products in this country.

Service response: Reducing exports will not increase logging and hauling jobs, which amount to about 1.1 jobs per million board feet of timber. However, reducing log exports could increase the number of secondary processing jobs in the northwest, which amount to about direct 11–13 jobs per million board feet. Each billion board feet of exported timber represents about 11,000–13,000 timber industry jobs.

Issue 30: The owl will have a significant impact on small businesses.

Service response: The Service has determined that the critical habitat designation will not have a significant impact on small business in an analysis required by the Regulatory Flexibility Act. The total impact of all owl protection measures may have a significant impact on small businesses, but the incremental effect of designating critical habitat will impact only 848 direct industry jobs, and has been determined to not, by itself, be a significant impact to small businesses over the three-State area.

Issue 31: Access corridors to private lands are included in critical habitat, therefore, critical habitat will effect private landowners. Timber values on

private lands requiring access through Federal lands would be reduced if Section 7 consultations restrict access. Impacts to private lands should be addressed in the report.

Service response: The Service anticipates being able to work with other Federal agencies to minimize effects on private landowners. The Service recognizes that consultation may, in some limited cases, result in modified access to private lands, but cannot quantify the economic effects.

Issue 32: A quantitative (but non-dollar) assessment is also necessary to assure that the proposed critical habitat is cost-effective. Cost-effectiveness requires that the desired level of owl protection be achieved at the lowest possible cost in terms of other lost resource values, principally lost timber values.

Service response: Cost-effectiveness as defined by the commenter and the benefit-cost analysis required by the Endangered Species Act are two different things. The Act requires that benefits be compared to costs so long as species extinction is not the result. The designation of critical habitat is economically viable when the benefits are greater than the costs. The designation of critical habitat is not economically viable when the costs are greater than the benefits. In the economic analysis, the Service must weigh the conservation and other benefits of habitat protection against the economic and social costs of reduced timber harvest. The commenter's cost-effectiveness definition is more restrictive than the benefit-cost test; the Service has not measured the appropriateness of critical habitat designation using the commenter's definition of cost-effectiveness.

Issue 33: The exclusion process needs to explicitly take account of the value of timber foregone, which is clearly the largest cost of the designation.

Service response: The value of timber foregone is defined as the value of the economic rent of the timber and has been included in the Service's economic analysis. The economic rent is the amount of Federal revenue that comes from the sale of timber from public lands. This measure of the value of timber foregone is a major component of the total cost estimate.

Issue 34: The Service failed to quantify opportunity costs of timber set-asides.

Service response: The opportunity costs of timber set-asides is the loss of Federal revenue due to the restriction of logging on Federal land. This loss estimate is included in the economic analysis.

Issue 35: The assumption that stumpage prices are expected to rise significantly by 1995 because of the shortage of stumpage volume brought about by the listing and critical habitat designation is at variance with the Forest Service land management planning assumptions that Forest Service timber supplies will exhibit a horizontal demand curve.

Service response: The Forest Service land management planning assumption that the demand curve for timber will be horizontal has no bearing on the assumption that stumpage prices will rise significantly by 1995. The economic factors that determine consumer demand do not influence industry supply, i.e., the factors that propel upward stumpage prices. The assumptions of increased stumpage prices are based on industry and Forest Service data that support this determination.

Issue 36: The American people have the right to know the true costs of these proposals in lost taxes, lost wages, and increased costs in housing and paper products.

Service response: The effect on lost taxes and increased housing costs are not estimated in the Economic Analysis Report because they are transfer costs and not measures of economic efficiency. Many of these effects are regional in nature, and are mitigated by compensating mechanisms in the industry in other production areas. An estimate of lost wages is included in the final economic analysis.

Issue 37: The use of county-based assessments underestimates job losses and associated impacts on adjacent counties.

Service response: The focus of part of the economic analysis at the county level may have appeared to underestimate job losses, but modifications to the IMPLAN model, job response coefficients, and indirect multipliers used by the Service were intended to fully display all job losses in the Region. Expansion of the IMPLAN model to a sub-region level further provided a mechanism to fully address all job losses. However, by focusing at the county level, some jobs may have been assigned to one county that were lost in an adjacent county, but this effect is expected to be minimal, and the total job loss in the region should be estimated properly.

Issue 38: The Service used an indirect multiplier of about 1.6; this seems low, since others use multipliers of up to 2.2 to arrive at both direct and indirect jobs.

Service response: The Service's use of a lower multiplier was counterbalanced by the use of a higher estimate of direct job coefficients. The Service's economic analysis defined the size of the "direct" timber industry to be greater than the definitions used in some of the other analyses. The higher job coefficients, when combined with the lower multiplier, arrived at job impact estimates within the ranges of those reported in other studies.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within critical habitat units, it is not clear whether significant economic impacts will result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implications Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the owl in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that the designation does not pose significant takings implications.

References Cited

A complete list of all references cited herein is available upon request from the Portland Regional Office (see ADDRESSES above).

Authors

The primary authors of this rule are Barry S. Mulder and Karla J. Kramer, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement (see ADDRESSES section); Steve Spangle, U.S. Fish and Wildlife Service, Sacramento Field Station; Michael Tehan, U.S. Fish and Wildlife Service, Olympia Field Station; and Randy G. Tweten, U.S. Fish and Wildlife Service, Portland Field Station.

The economic summary was prepared by Mel Schamberger, U.S. Fish and Wildlife Service (see ADDRESSES section); John Charbonneau and Michael Hay, U.S. Fish and Wildlife Service, Office of Policy, Budget, and Administration, Washington, DC; and Richard Johnson, U.S. Fish and Wildlife Service, National Ecology Research Center, Fort Collins, Colorado.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. § 17.11(h) is amended by revising the "Critical habitat" entry for "Owl, northern spotted", under BIRDS, to read "17.95(b)".

3. § 17.95(b) is amended by adding critical habitat for the northern spotted owl (*Strix occidentalis caurina*) in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

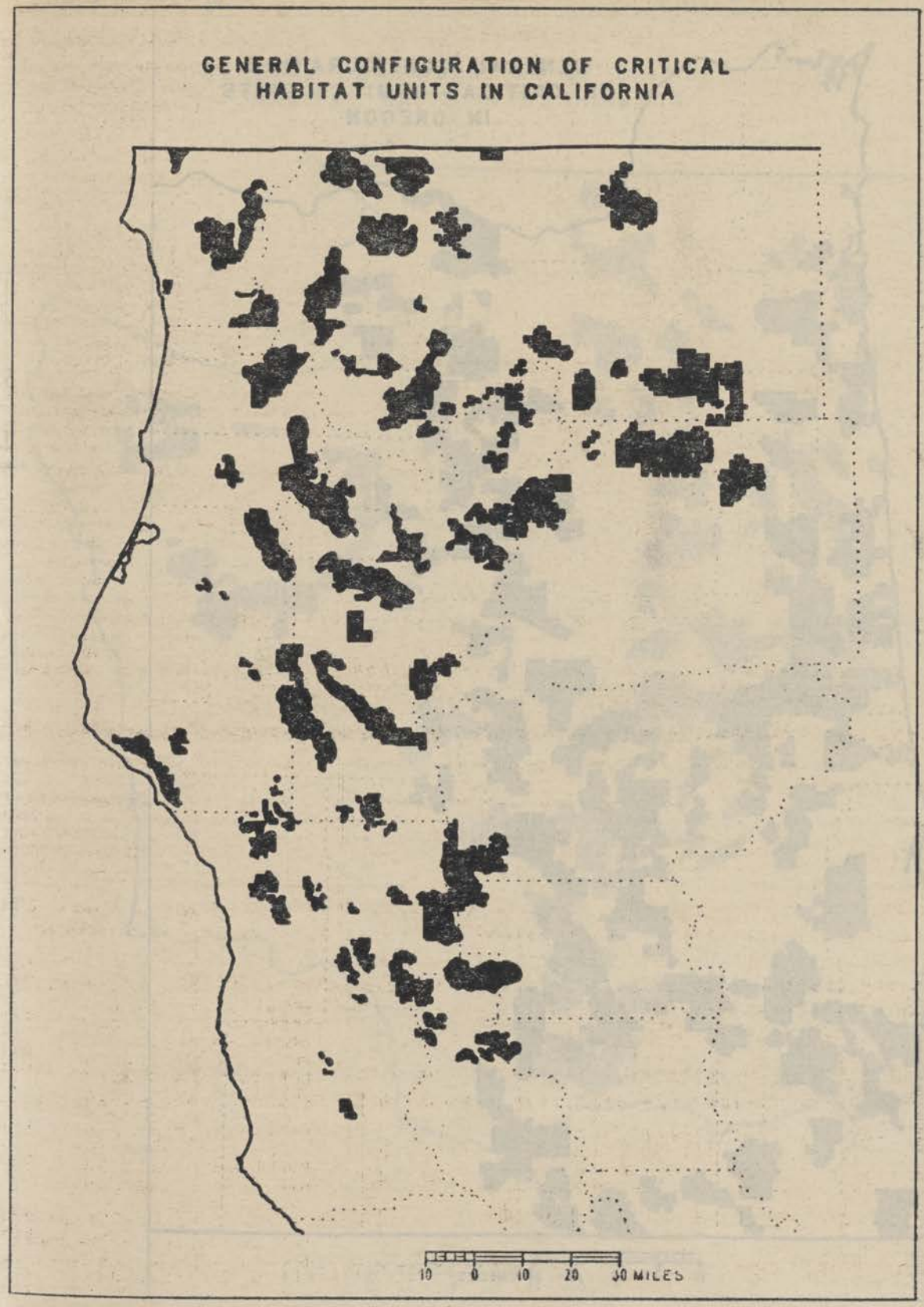
(b) * * *

NORTHERN SPOTTED OWL (*Strix occidentalis caurina*)

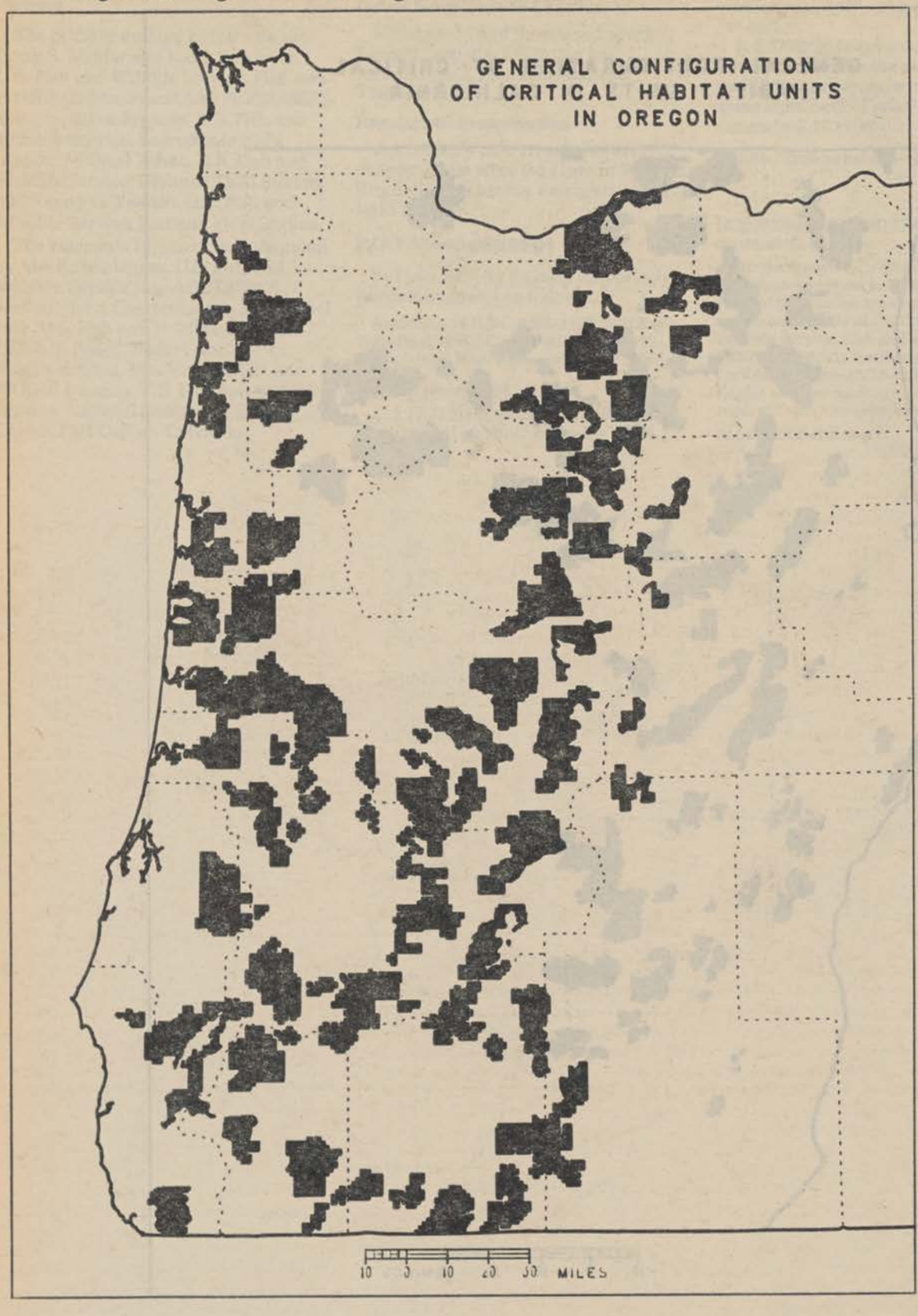
For the States of California, Oregon, and Washington, critical habitat units under Federal jurisdiction are depicted on maps maintained on file at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131). Copies of these maps are available upon request at the requester's expense.

BILLING CODE 4310-55-M

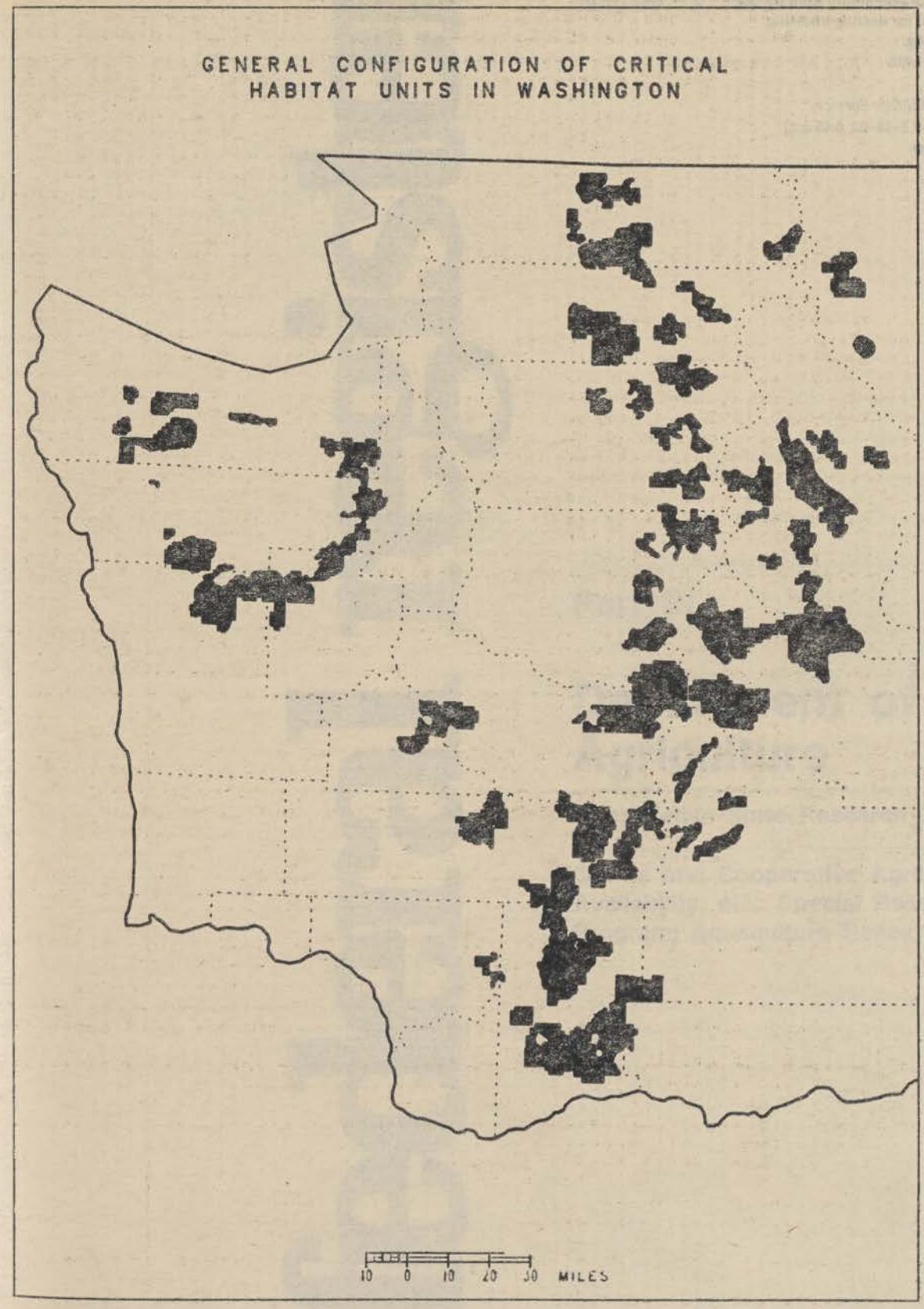
The general configuration of the California areas are illustrated on the map which follows:



The general configuration of the Oregon areas are illustrated on the map which follows:



The general configuration of the Washington areas are illustrated on the map which follows:



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Primary constituent elements: forested lands that are used or potentially used by the northern spotted owl for nesting, roosting, foraging, or dispersing.

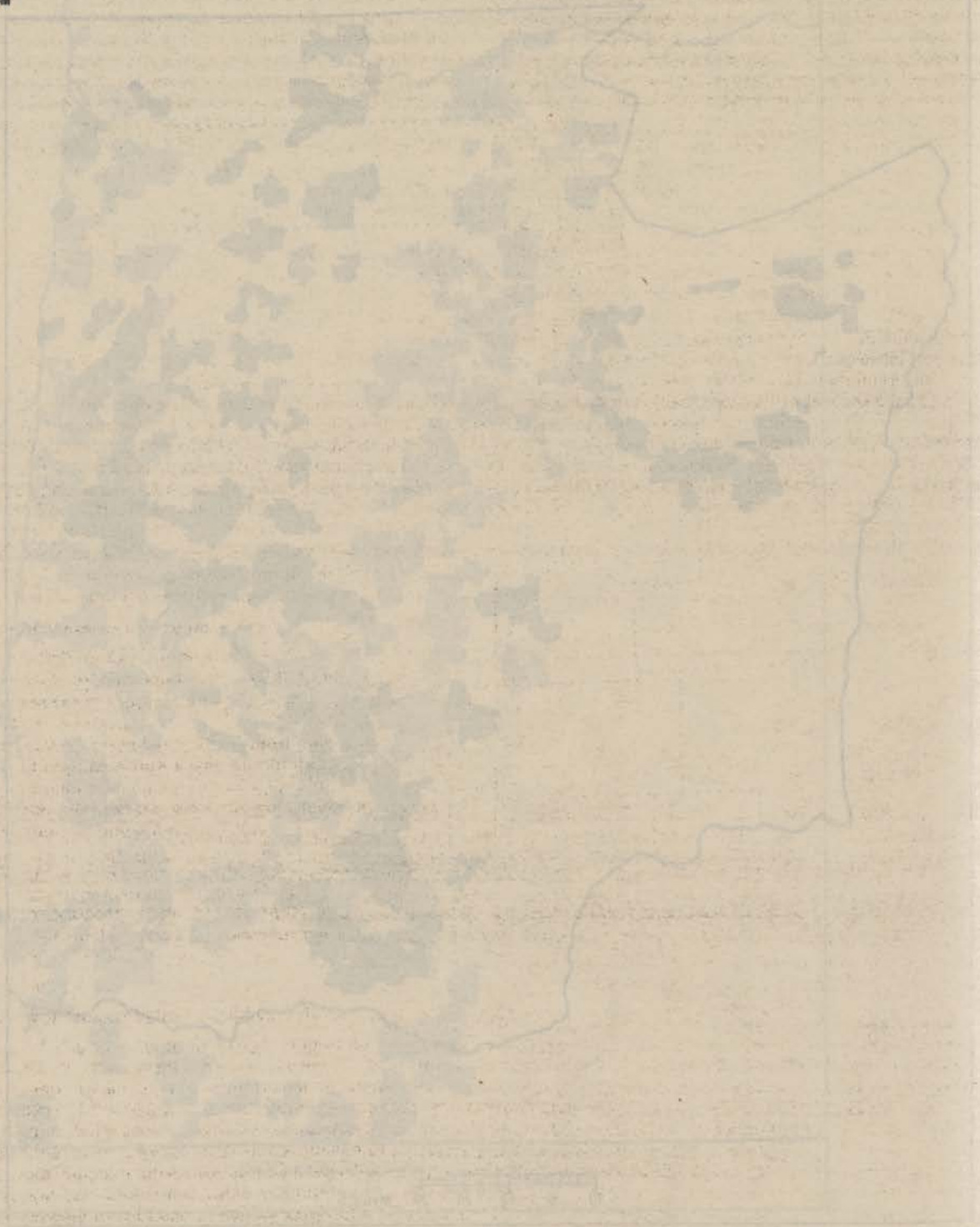
Dated: January 8, 1992.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 92-874 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-55-M



federal register

Wednesday
January 15, 1992

Part III

Department of Agriculture

Cooperative State Research Service

Grants and Cooperative Agreements; Availability, etc.: Special Research Program; Aquaculture Research; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Aquaculture Research; Fiscal Year 1992; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program, Aquaculture, Research, for fiscal year 1992.

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624 (7 U.S.C. 450i). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

Please note that Section 734 of the Fiscal Year 92 Appropriations Act, Public Law No. 102–142, states: "None of the funds in this Act shall be available to pay indirect costs on research grants awarded competitively by the Cooperative State Research Service that exceed 14 percent of total direct costs under each award."

Applicable Regulations

Regulations applicable to this program include the following: (a) The Administrative Provisions governing the Special Research Grants Program, 7 CFR part 3400 (56 FR 58146, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (e) New Restrictions on Lobbying, 7 CFR part 3018.

Introduction to Program Description

Standard grants will be awarded to support basic studies in selected areas of aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below and that are consistent with the mission of USDA. Program subareas and guidelines are provided below as bases from which proposals may be developed:

Program Area

1.0 Aquaculture Research

CSRS Contact: Dr. Meryl Broussard; Telephone: (202) 401–4061.

Funds will be awarded to support research seeking solutions to health problems of major finfish species. A total of approximately $299,320 will be available for this program area for fiscal year 1992. Up to $80,000 will be awarded for the support of any one project under this program area.

The objective of this program is to fund research to enhance the knowledge and technology base necessary for the continued growth of the domestic aquaculture industry as a form of sustainable agriculture. Emphasis is placed on research leading to improved production efficiency and increased competitiveness of private sector aquaculture in the United States. Because of limited funds for this program, only proposals focused on commercially important finfish species in the specific subareas of Disease and Parasite Control (1.1) and Integrated Aquatic Animal Health Management (1.2) will be considered.

The specific objective of this research is to improve aquatic animal health management practices in aquaculture.

Research should be directed toward:

1.1 Disease and Parasite Control

Studies to clarify high-priority infectious and noninfectious diseases and parasites and their interactive effects on aquatic animal health; development of improved methods of detecting disease agents or antibodies in aquatic animals; clarification of disease pathogenesis; determination of methods of disease transmission; development of improved methods of immunization against disease agents that will provide solid and persistent protection without compromising diagnosis; development of alternative disease eradication methods so as to limit the use and dependence on biotoxic substances; development of other disease prevention, control and eradication technology; and epidemiology and the evaluation of the economics of disease and disease prevention or control.

1.2 Integrated Aquatic Animal Health Management

Interdisciplinary studies aimed at reducing acute and chronic losses related to aquatic animal health in aquacultural production systems through an integrated holistic approach including studies in the following areas; physiological stress related to the quality of the aquatic production system; genetic, environmental and nutritional components of aquatic health management.

Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded.

How To Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions governing this program, 7 CFR part 3400, as amended (56 FR 48146, November 15, 1991), may be obtained by writing to the address or calling the telephone number below: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200. Telephone: (202) 401–5048.

What To Submit

An original and nine copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit.) It should be noted that the November 1990 version of the Grant Application Kit must be used, as previous versions are obsolete.

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 15 pages (single-spaced) exclusive of required forms, the summary of progress for any prior

Aquaculture Special Research grants, bibliography, and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

All copies of a proposal must be mailed in one package and each copy must be stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions that govern the Special Research Grants Program, 7 CFR part 3400, as amended.

Where and When To Submit Grant Applications

Each research grant application must be submitted by the date set forth below to: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200. Telephone: (202) 401–5048.

Please Note: Hand delivered proposals or those delivered by overnight express service should be brought to: Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

To be considered for funding under the Special Research Grants Program, Aquaculture Research, during fiscal year 1992, proposals must be postmarked by March 2, 1992.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Special Requirements

On Form CSRS–661 provided in the Grant Application Kit, the Special Research Grants Program should be indicated in Block 7, and "Aquaculture Research 1.0" should be indicated in Block 8.

Investigators and co-investigators who have received Special Research Grant awards in the Aquaculture area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

Supplementary Information

The Special Research Grants Program is listed in Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3014, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 9th day of January 1992.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 92–988 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–22–M

federal register

Wednesday
January 15, 1992

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Housing Counseling; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3335; FR 3090-N-01]

Housing Counseling; Funding Availability

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1992.

SUMMARY: This Notice announces the availability of funding for Fiscal Year (FY) 1992 for HUD-approved housing counseling agencies to provide housing counseling to homebuyers, homeowners, and renters, as set forth in HUD Handbook No. 7610.1 REV-2, dated September 1990 (the Handbook). An applicant must, as of the date of issuance of the Request for Grant Application (RFGA) based on this NOFA, be a HUD-approved housing counseling agency, and must be able and willing to provide, at a minimum; (1) Delinquency and default counseling to renters and homeowners; and (2) related counseling under HUD's single family mortgage assignment program. Exceptions to these two requirements are applicants approved by HUD to provide ONLY tenant counseling or Home Equity Conversion Mortgage counseling, or prepurchase counseling, including the counseling of tenants to purchase their rental unit. An applicant agency may offer any other aspect(s) of counseling set forth in the Handbook, including Home Equity Conversion Mortgage counseling. Housing counseling services not covered by the Handbook do not qualify for eligibility for funding under this NOFA.

In the body of this document is information concerning: The purpose of this NOFA; eligibility for funding; available funding; selection criteria; and the application process, including how to apply for funding, and how selections will be made.

DATES: The application due date will be specified in the application kit, but it will be no earlier than February 28, 1992. Application kits (Request for Grant Application—RFGA) will be available from the Regional Contracting Officer in the HUD Regional Office that serves the area in which the applicant agency is located. Application kits will be available on and after January 15, 1992. Applications are due in the HUD Regional Office that serves the area in which the applicant agency is located on February 28, 1992. The RFGA will specify the time by which the application must be submitted to the HUD Regional Office. Please see Section II of this NOFA for further information on what constitutes proper submission of an application.

FOR FURTHER INFORMATION CONTACT: Thomas Miles, Program Advisor, Single Family Servicing Division, Department of Housing and Urban Development, room 9178, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1672, or (202) 708-4594 (TDD number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535-0084.

I. Purpose and Substantive Description

A. Authority and Background

1. Authority: Sec. 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x); secs. 235, 237 and 255 of the National Housing Act, as amended; and HUD Handbook 7610.1, REV-2, dated September 1990.

2. Background. Section 106 of the Housing and Urban Development Act of 1968 (section 106) authorizes HUD to provide a program of housing counseling services to designated homeowners and tenants. The program authorized by section 106 (Housing Counseling Program) is divided into two distinct components: the housing counseling services and requirements provided under section 106(a), and those services and requirements provided under section 106(c).

Section 106(a) authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. With respect to homeowners, section 106(a) states that the above-described services shall be provided to homeowners with HUD-insured mortgages; first-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949 (home loans guaranteed by the Farmers Home Administration); and homeowners with loans guaranteed or insured under chapter 37 of title 38, United States Code (home loans insured or guaranteed by the Department of Veterans Affairs).

Section 106(c) authorizes homeownership counseling only (no tenant counseling) and defines a homeowner eligible for counseling under this section as a homeowner whose home loan is secured by property that is the principal residence of the homeowner, who is unable to correct a home loan delinquency within a reasonable time. Section 106(c) defines "home loan" as a loan secured by a mortgage or lien on residential property.

Under the Housing Counseling Program, HUD contracts with public or private organizations to provide the housing counseling services authorized by section 106(a) and section 106(c). When the Congress makes funds available to assist the Housing Counseling Program, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. An agency that is approved by HUD as a housing counseling agency does not automatically receive funding. The agency must apply for such funding under a Request for Grant Application (RFGA) issued by HUD through its Regional Offices. The purpose of the housing counseling program is to promote and protect the interests of HUD, HUD-approved and other mortgagees, and housing consumers participating in HUD approved and other housing programs.

B. Allocation Amounts

1. Total Available Funding. A total amount of $6,025,000 was appropriated for housing counseling by the HUD Appropriations Act of 1992. Of that amount, the Act appropriates $350,000 for a prepurchase counseling and foreclosure prevention counseling demonstration. The National Affordable Housing Act of 1990 (the Act) authorizes up to $2,000,000 for the establishment of a toll-free telephone number through which interested parties may obtain lists of HUD-approved housing counseling agencies.

Of the $6,025,000, HUD will use $225,000 to help resolve two litigation matters in Texas and Boston that involve housing counseling; $150,000 to continue the toll-free telephone number in Fiscal Year 1992; $149,510 to provide training for the Home Equity Conversion Mortgage (HECM) Program; and $350,000 for a prepurchase counseling and foreclosure prevention counseling demonstration. HUD will make the

remaining $5,150,490 available for the counseling services specified in the Act. This amount will be allocated for counseling activities as follows:

Activities	Millions
a. Housing counseling services under section 106(a) of the Housing and Urban Development Act of 1968	$3,325,490
b. Emergency Homeownership Counseling under section 106(c) of the Housing and Urban Development Act of 1968	1,825,000
Total Allocation for Counseling Services	5,150,490

2. Allocation of Funds to Regional Offices. HUD Headquarters will allocate the $5,150,490 available for housing counseling services to its ten Regional Offices. The basis for the allocation is the percentage of HUD-insured single family mortgage defaults within each Region, compared to the nationwide total. Under this plan, the Regions are required, in so far as possible, to award grants in relation to the number of defaults within HUD Field Office jurisdictions. The amounts allocated to the Regions for Fiscal Year 1992 (based on the $5,150,490) are as follows:

Region	Defaults	Percentage*	Allocation
I	1,765	1.00	51,537
II	11,801	6.69	344,579
III	16,285	9.23	475,508
IV	44,222	25.07	1,291,243
V	29,956	16.98	874,689
VI	31,632	17.93	923,626
VII	5,105	2.89	149,061
VIII	9,538	5.41	278,501
IX	22,566	12.79	658,907
X	3,522	2.00	102,839
Totals	176,392	100	5,150,490

* Percentages have been rounded.

3. Grant Awards by HUD Regional Offices. Regional Offices will make an equitable awarding of allocated housing counseling funds to eligible HUD-approved housing counseling agencies based upon documented need in relation to:

a. The amount of funds available; and

b. The number of successful applicants. (A determination of a "successful" applicant is based on the applicant's ability to meet the selection criteria, as specified in Section I.D of this NOFA.)

4. Announcement of Awards. In accordance with the requirements of section 103 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and HUD's implementing regulations at 24 CFR part 4, no selection information will be made available to applicants or other persons not authorized to receive this information during the period of HUD review and evaluation of the applications. However, applicants that are declared ineligible or late will be notified. In accordance with section 102(a)(4)(c) of the HUD Reform Act, HUD will notify the public, by notice published in the **Federal Register**, of award decisions made by HUD under this funding.

5. Grantee Reimbursement by HUD. HUD will reimburse grantees on the basis of not more than $35.00 per "counseling unit" which is defined as a documented face-to-face, written, or telephonic contact between:

a. The grantee's housing counselor and a client; or

b. The grantee's housing counselor and a mortgagee, landlord, service agency, creditor, credit reporting agency, governmental agency, realtor or employer, acting on behalf of a client, which results in an action or decision that:

(1) Identifies, clarifies, or assists in meeting or meets the client's housing need; or

(2) Assists in resolving or resolves the client's housing problem.

(See HUD Handbook 7610.1 REV-2, dated September 1990, paragraph 1-7 on page 1-6 for a definition of "client," "housing need," and "housing problem.")

C. Eligibility

Eligible applicants include public and private nonprofit entities with a current approval by HUD as housing counseling agencies, under the provisions of HUD Handbook No. 7610.1 REV-2, dated September 1990, or its earlier versions. Current approval includes agencies that are on record at the applicable HUD Field Office as having been approved as a HUD counseling agency as of the date of issuance of the RFGA based on this NOFA. Agencies for which HUD has withdrawn this approval or have indicated in writing their withdrawal from the counseling program are NOT eligible. Agencies with "conditional" re-approvals are NOT eligible unless they satisfy HUD's requirements for removal of the "conditional" approval by the due date of applications for funding under this notice.

D. Selection Criteria

1. General Criteria. HUD, through its Regional Contracting Officers, will award housing counseling grants in Fiscal Year 1992 to selected eligible agencies. Within each Region, an eligible agency is a HUD-approved housing counseling agency that is:

a. Located within the Region's geographical jurisdiction; and

b. Provides, or proposes to provide, housing counseling within that Region. (Application eligibility and grant authority do NOT cross regional boundaries.)

2. Specific Criteria. Applications for funding under this notice will be reviewed, and grants will be awarded on the basis of an evaluation of all of the following criteria:

a. Amount requested by the grantee;

b. If the applicant had a HUD housing counseling grant in 1987, 1988, 1989, 1990, or 1991, the applicant's use of those funds;

c. Applicant's documented client workload*

(*"Workload" refers to the number of clients, as defined in HUD Handbook No. 7610.1 REV-2, dated September 1990, reported by the applicant on Form HUD-9902, Housing Counseling Agency Activity Report, for 1991);

d. Client workload total for all applicants within a HUD Regional Office;

e. Amount of housing counseling funds allocated to the HUD Regional Office by Headquarters;

f. Reimbursement of grantees by HUD on the basis of $35.00 per housing counseling unit;

g. Regional Offices' documented need for housing counseling services within the areas served by the applicants;

h. HUD's assessment of the applicant's previous performance as a HUD-approved housing counseling agency (i.e. Biennial Performance Review), including the submission of the required reports.

i. In the case of previous grantees, the applicant's performance under such grants in accordance with the terms of the grant agreement, including the submission of the specific reports required under the grant agreement.

II. Application Process

A. Obtaining and Submitting Applications

Applicants for grants may obtain copies of the Request for Grant Application (RFGA) from the Regional Contracting Officer in the HUD Regional Office that serves the area in which the applicant agency is located. The RFGA contains the application submission address. A list of the Regional Offices and their addresses follows the text of this NOFA.

B. Application Deadline

The application due date will be set out in the application kit, but it will be

no earlier than February 28, 1992. The RFGA contains the time by which the HUD Regional Office must receive a grant application. "Submit" means delivery to the HUD Regional Office specified in the RFGA and by the application due date and time specified in the RFGA. A proper submission in response to the RFGA must conform to the specifications in the RFGA. HUD will not accept changes made by applications to the forms, certifications and assurances, except for those specified in section IV.A of this NOFA.

III. Checklist of Application Submission Requirements

An applicant must submit three different types of written submissions: forms, certifications, and assurances. An applicant must submit three sets of each written submission, as specified below, with supporting documentation only as specified in the RFGA. Applicants must limit the submission of material to that required by the individual form, certification or assurance. HUD will not consider extraneous material and will discard it.

A. Forms

Each applicant will be required to submit the following completed and signed forms:

1. Standard Form 424, Application for Federal Assistance.

2. Standard Form 424B, Assurances—Non-construction Programs.

B. Certifications

Each applicant will be required to submit, at a minimum, the following certifications:

1. Certification of a Drug-Free Workplace, in accordance with the Drug-Free Workplace Act of 1988 and HUD's regulations at 24 CFR part 24, subpart F.

2. Anti-Lobbying certification in accordance with section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and the regulations at 24 CFR part 87.

C. Assurances

Each applicant will be required to submit, at a minimum, assurances regarding the applicant's housing counseling program to the effect that:

1. The applicant agency received its approval by HUD prior to the date of issuance of the applicable RFGA, and currently has approval from HUD. If a Biennial Performance Review has not been made by the HUD Field Office, then a prior approval constitutes a current approval.

2. The applicant agency provided housing counseling to clients* during 1991 as indicated on the applicant's Form HUD–9902, Housing Counseling Agency Activity Report, for 1991. The applicant must submit with their response to the RFGA a copy of their 1991 Form HUD–9902. An applicant approved by HUD after December 30, 1991, must submit Form HUD–9902 for 1991 as part of its application. (*See HUD Handbook No. 7610.1 REV–2 (September 1990) for a definition of "client.")

3. HUD has or has not conducted a performance review of the applicant agency's housing counseling program; whether, as a result of the review, HUD re-approved the agency unconditionally or conditionally; whether, if HUD granted a conditional approval because of certain agency performance deficiencies, the applicant agency corrected the deficiencies to HUD's satisfaction.

4. If the applicant agency received a counseling grant from HUD during HUD's fiscal year 1987, 1988, 1989, 1990, or 1991, the agency complied with all grant requirements.

5. The applicant agency submitted all reports required during the most recent report year under the Handbook, and the grant document, if any.

6. The number of clients listed as the applicant's documented housing counseling client workload for 1991 is correct.

7. The agency can and will commence counseling services immediately upon receipt of the notice of the award of a counseling grant to the applicant agency.

8. The applicant will provide, at a minimum, the following types of counseling (exceptions are agencies approved by HUD to perform only Home Equity Conversion Mortgage (HECM) counseling or tenant counseling):

a. Delinquency and default counseling to home buyers and homeowners, and delinquency counseling to renters; and

b. Mortgage assignment counseling to mortgagors with HUD-insured mortgages having potential for assignment to HUD under the assignment program.

9. The agency had an independent financial audit during the past twenty-four (24) months.

10. The applicant administers its housing counseling program in accordance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

11. The applicant provides its service without any conflict of interest on the part of the applicant, including its staff, that might compromise the agency's ability to represent fully the best interests of the client in accordance with HUD Handbook No. 7610.1 REV–2, dated September 1990.

12. The applicant's clients reside in the U.S. Postal Service ZIP Code areas listed by the applicant.

IV. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determine whether all items were submitted. Applicants will be given an opportunity to cure nonsubstantive deficiencies in their applications. The applicant must submit corrections within 14 calendar days from the date of HUD's deficiency notification or the application will not be considered.

A. Curable Deficiencies

The kinds of deficiencies which can be cured after the submission date for applications has passed are limited to the following:

1. Lack of required signature(s) on the following documents or certifications:

a. Standard Form 424B, Assurances—Non-Construction Programs.

b. Certification of Drug-free Workplace.

c. Anti-Lobbying Certification.

2. Failure to submit any of the above documents or certifications.

B. Noncurable Deficiencies

Failure to submit:

1. A completed and signed Standard Form 424, Application for Federal assistance.

2. A signed Housing Counseling Program assurance and all of its required documentation. Failure to submit these items will be considered a non-response to the RFGA.

Note: HUD WILL NOT NOTIFY APPLICANTS WHO FAIL TO SUBMIT ANY OF THE ABOVE TWO REQUIRED DOCUMENTS. FAILURE TO SUBMIT THE DOCUMENTS CONSTITUTES A NON-RESPONSE TO THE RFGA.

V. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative

Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Prohibition Against Lobbying of HUD Personnel

Section 112 of the Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (HUD Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 or 708–1112 (TDD). These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquires to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.)

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism, Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the purpose of the funding under this notice is to provide grants to public and private agencies that assist and advise housing consumers about how to develop competence and responsibility in meeting their housing needs.

G. Family, Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document may have potential for significant beneficial impact on family formation, maintenance, and general well-being to the extent that the activities of grantees will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the impact on the family is considered beneficial, no further review under the Order is necessary.

H. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.169.

Authority: Secs. 106, Housing and Urban Development of 1968; secs 235, 237 and 255 of the National Housing Act, as amended; and HUD Handbook No. 7610.1, REV–2, dated September 1990.

Dated: December 30, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

HUD Regional Offices

Address all inquiries to U.S. Department of Housing and Urban Development, Attention: Regional Contracting Officer, in the Regional Office that serves your State. Telephone numbers are NOT toll-free.

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, (617) 835–5161.

Region II—New Jersey, New York

26 Federal Plaza, New York, NY 10278–0068, (201) 349–1845.

Region III—Delaware, Maryland, Pennsylvania, Virginia, Washington (D.C.), West Virginia

Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392, (215) 597–8165.

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee

Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, GA 30303–3388, (404) 841–4064.

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

626 West Jackson Boulevard, Chicago, Illinois 60606–5601, (312) 353–6093.

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113–2905, (817) 728–5452.

Region VII—Iowa, Kansas, Missouri, Nebraska

Professional Building, 400 State Avenue, Kansas City, KS 66101–2506, (913) 757–2102.

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Executive Tower Building, 1405 Curtis Street, Denver CO 80202–2349, (303) 564–3363.

Region IX—Arizona, California, Hawaii, Nevada

Phillip Burton Federal Building and U.S. Court House, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102–3448, (415) 556–7913.

Region X—Alaska, Idaho, Oregon, Washington

Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101–2058, (206) 399–7662.

[FR Doc. 92–1001 Filed 1–14–92; 8:45 am]

BILLING CODE 4210–27–M

federal register

Wednesday
January 15, 1992

Part V

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations; Analytical Techniques; Coliform Bacteria; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH-FRL-4012-9]

National Primary Drinking Water Regulations; Analytical Techniques; Coliform Bacteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In an earlier notice (54 FR 27544; June 29, 1989), EPA approved the use of the Minimal Medium ONPG–MUG (MMO–MUG) Test for total coliform analysis for compliance with the maximum contaminant level (MCL) for total coliforms under the Safe Drinking Water Act (SMWA). (ONPG is ortho-nitrophenyl-β-D-galactopyranoside; MUG is 4-methylumbelliferyl-β-D-glucuronide.) On January 8, 1991, EPA deferred approval of the MMO–MUG Test for *Escherichia coli (E. coli)* detection. The Agency also restricted transferring cultures (i.e., subculturing) from total coliform-positive MMO–MUG tests. Today's action relieves this restriction.

EFFECTIVE DATE: January 15, 1992.

ADDRESSES: The supporting documents cited in the reference section of this notice and other pertinent information are available for review at EPA's Drinking Water docket, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call (202) 260–3027 on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Time for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul S. Berger, Ph.D., Office of Ground Water and Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–3039; or the Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 5 p.m. Eastern Time.

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I. Statutory Authority

The SDWA requires EPA to promulgate National Primary Drinking Water Regulations (NPDWRs) which include MCLs or treatment techniques (section 1412). NPDWRs also contain "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels * * *" (section 1401(1)(D)). In addition, section 1445(a) of the SDWA authorizes the Administrator to require monitoring to assist in determining whether persons are in compliance with the requirements of the SDWA. EPA's promulgation of analytical techniques is authorized under these sections of the SDWA. EPA has promulgated analytical techniques for all currently regulated drinking water contaminants; persons must use one of the approved analytical techniques for determining compliance with the MCLs (see 40 CFR 141.21–30). Today's action removes a constraint in the use of a previously approved method for detecting total coliform bacteria.

II. Regulatory Background

On June 19, 1989, EPA promulgated revised regulations for total coliforms (54 FR 27544, June 29, 1989), with an effective date of December 31, 1990. Paragraph 141.21(f) of those regulations approves four analytical methods for testing for the presence of total coliforms, including the MMO–MUG Test. Paragraph 141.21(e) requires public water systems to test all total coliform-positive cultures for the presence of either fecal coliforms or *E. coli*. EPA proposed three analytical methods for *E. coli* on June 1, 1990, and promulgated two of them on January 8, 1991.

The Agency deferred final action on one of the proposed methods for *E. coli* detection, the MMO–MUG Test (also referred to as the Autoanalysis Colilert System), because public commenters raised questions about its ability to detect low densities of environmentally stressed *E. coli*. This issue, the false-negative rate, is not addressed by today's action. Data provided by one commenter led the Agency to consider whether to allow transfer (subculture) from a total coliform-positive (but *E. coli*-negative) MMO–MUG tube to an EPA-approved *E. coli* medium. In the preamble, the Agency indicated that it would consider additional data to determine if such transfers should be permitted. The Agency's decision to give further consideration to subculturing effectively meant that laboratories could not use the MMO–MUG Test for determining compliance with the total coliform rule. This subculture issue is the subject of today's action.

III. Discussion

Today's action removes the limitation imposed by the Agency's further study on subculturing, and allows a laboratory to transfer a total coliform-positive, MUG-negative (i.e., *E. coli*-negative) culture by the MMO–MUG Test to an EPA-approved *E. coli* test. This is accomplished by minor adjustments to the already approved subculturing procedures specified in the January 8 rule for other tests.

The MMO–MUG Test is designed to identify both total coliforms and *E. coli* in a single container. The *E. coli* portion of the test is based on the ability of *E. coli* to produce the enzyme beta-glucuronidase, which hydrolyzes the 4-methylumbelliferyl-beta-D-glucuronide (MUG) contained in the medium to form 4-methylumbelliferone, which fluoresces when exposed to ultraviolet light (366 nm). The MUG reaction is also the basis for the EC+MUG test and Nutrient Agar+MUG test, both of which were approved by EPA for *E. coli* testing in the January 8, 1991, rule.

As stated above, EPA deferred the use of subculturing from the MMO–MUG Test until data were available to show that an initially low density of stressed *E. coli* would grow in the MMO–MUG Test medium, within the prescribed 28 hour incubation time, to a sufficiently high density. A high density is needed to allow a laboratory to transfer (i.e., subculture) and *E. coli*-positive, but MUG-negative, culture to an approved *E. coli* test, using a pipet, loop, or other standard microbiological transfer technique.

EPA developed a testing protocol to examine the transfer question, and this protocol was reviewed by EPA's Science Advisory Board. The protocol describes an approach for determining if initially low numbers of chlorine-injured *E. coli* in total coliform-positive cultures by the MMO–MUG Test could be transferred to and detected by the EPA-approved EC Medium+MUG. EPA funded a study using the transfer protocol which indicated that initially low levels of *E. coli* do reach sufficiently high levels after 28 hours of incubation to allow for successful transfer. This is true for both MUG-positive and MUG-negative MMO–MUG tests. The protocol used and the final report of the study are in

the EPA's Drinking Water Docket for *E. coli*.

In this study, Dr. Pipes of Drexel University found that all MUG-positive cultures from the MMO–MUG Test (total of 88) were also MUG-positive in EC Medium + MUG. These data support the view that few false-positives are associated with the MMO–MUG Test. Of the 32 MUG-negative cultures from the MMO–MUG Test, 10 and 11 cultures were MUG-positive in EC Medium + MUG using a calibrated loop (0.01 ml) or pipet (0.1 ml), respectively, for transfer. Based on Dr. Pipes' statistical analysis of the data, it is likely that most or all of the remaining MUG-negative MMO–MUG cultures (total of 21) were *E. coli*-negative. These data indicate that MUG-negative, but *E. coli*-positive, cultures from the MMO–MUG medium can be successfully transferred.

Based on this analysis, EPA concludes that stressed *E. coli* in MUG-negative cultures can grow to a density sufficient for successful transfer by a pipet. Of the eleven MUG-negative MMO–MUG cultures that were MUG-positive in EC Medium + MUG, however, only five were MUG-positive in EC Medium + MUG medium when the original MUG-negative MMO–MUG cultures were diluted by a factor of 10 or 100 before transfer. This suggests that, in some cases, the density of initially stressed *E. coli* only barely reached levels that allowed for successful transfer.

Given the data above, EPA believes that *E. coli* usually will either produce a MUG-positive reaction after 28 hours of incubation, or, if MUG-negative, can be successfully subcultured to EC Medium + MUG. For this reason, today's action allows laboratories to transfer a total coliform-positive MMO–MUG Test culture to an EPA-approved *E. coli* medium. The Agency cautions, however, that any such transfer is to be conducted on a 28-hour culture, rather than a 24-hour culture. EPA believes a 28-hour incubation time is sufficient to allow initially low densities of stressed *E. coli* to reach sufficiently high densities to allow transfer by standard microbiological procedures.

As stated above, EPA's primary uncertainty about the MMO–MUG Test is the false-negative rate. As discussed in the preamble to the notices of June 1, 1990, and January 8, 1991, and in the Comment/Response document to the final rule, EPA believes the false-positive rate for the *E. coli* portion of the MMO–MUG Test is low. For this reason, EPA believes that a total coliform-positive culture which fluoresces (i.e., MUG-positive) must be considered *E. coli*-positive. Thus, the Agency does not believe it necessary for a laboratory to subculture a MUG-positive result to an already approved *E. coli* medium.

IV. Notice and Comment

As noted above, comments on the *E. coli* methods focused on the false-negative rate of the MMO–MUG test in certain circumstances. As a result of these concerns, EPA deferred a decision on the use of the MMO–MUG test to detect *E. coli* pending additional analysis of this false-negative issue. Recognizing the continuing interest by the public in this issue, the Agency indicated in the January 8, 1991, notice, that it would present any new data in a notice of availability and seek public comment on whether to approve the MMO–MUG test as proposed earlier. One commenter questioned whether transfer from an MMO–MUG test to an EPA-approved medium should be allowed. While the January notice indicated that additional data on this subculturing issue would be provided for comment, the Agency has since concluded that for the reasons discussed below, public comment is unnecessary.

The comment on subculturing raised a minor technical issue. The Agency developed additional data to address the concerns raised by the commenter. Based on analysis of those data, the Agency has concluded that minor adjustments to the existing transfer methodology permit transfer from the MMO–MUG Test to an EPA-approved medium for *E. coli* detection. These adjustments do not substantially alter the framework of the already-approved transfer methodology. Moreover, these adjustments remove the barrier preventing use of the MMO–MUG Test for total coliform detection, a method already approved by the Agency.

V. Effective Date

This rule is effective on the date of publication, rather than 30 days from publication, as provided by the Administrative Procedure Act. EPA believes there is good cause for this rule to be effective immediately. This amendment relieves a restriction in the revised total coliform rule, and will benefit public water systems by allowing them to use an analytical method for total coliforms that the Agency has already approved. This approved method has the advantage of ease of application and therefore will provide an overall public benefit.

VI. Regulation Assessment Requirements

A. Executive Order 12291

Executive Order 12291 requires EPA to judge whether a regulation is "major" and, if so, to prepare a regulatory impact analysis. A rule is considered major if it has an economic impact of $100 million or more, causes a significant increase in cost or prices, or any of the other adverse effects described in the Executive Order. Since the objective of this rule is merely to allow a previously approved analytical method for total coliforms to be used, EPA has determined that this action is not a major rule within the meaning of the Executive Order. Water systems/laboratories may use the MMO–MUG Test for total coliforms or continue using other previously-approved methods. Therefore, there will not be any adverse economic impacts.

This notice was submitted to the Office of Management and Budget for its review under the Executive Order.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant effect on a substantial number of small systems, means should be sought to minimize the effects. The Small Business Administration defines a small water utility as one which serves fewer than 3,300 people. Under this definition, this rule would affect about 200,000 small systems.

This final rule is consistent with the objectives of the Regulatory Flexibility Act because it will not have a significant economic impact on small entities. The rule allows the use of an already approved analytical method for total coliform analysis. Since use of the *E. coli* tests is optional, and EPA is not promulgating any new requirement, the Agency believes that the impact of this notice would not have a significant effect on a substantial number of small entities.

C. Paperwork Reduction Act

This rule contains no information collection requirements and consequently is not covered by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

D. Science Advisory Board, National Drinking Water Advisory Council, and Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the Safe Drinking Water Act,

the Agency consulted with the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services and took their comments into account in developing the proposed rule on *E. coli* methods. In addition, the Agency submitted a copy of the transfer protocol to the Science Advisory Board for review, and revised it according to their comments.

List of Subjects in 40 CFR Part 141

Chemicals, Microorganisms, Indians—land, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

VII. References

Pipes, W. 1991. The transferability of *Escherichia coli* from MMO–MUG media for detection in drinking water samples. Report submitted to the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 141 of title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

2. Section 141.21 is amended by redesignating paragraph (f)(7) as paragraph (f)(8), and by adding a new paragraph (f)(7) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(7) If a system uses the MMO–MUG Test for total coliform detection, it must test all total coliform-positive cultures for fluorescence. To test for fluorescence, use an ultraviolet light (366 nm) in the dark after incubating the tube or container at 35 ± 0.5°C for 24–28 hours. If fluorescence is observed, the sample is *E. coli*-positive. If fluorescence is not observed, transfer a 0.1 ml, 28-hour culture to EC Medium + MUG with a pipet. The formulation and incubation conditions of EC Medium + MUG, and observation of the results are described in paragraph (f)(6)(i) of this section.

* * * * *

[FR Doc. 92–1070 Filed 1–14–92; 8:45 am]

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federal register

Wednesday
January 15, 1992

Part VI

Department of Transportation

Coast Guard

33 CFR Part 157

Draft Regulatory Impact Analysis, Including Regulatory Flexibility Act Analysis, and Finding of No Significant Impact for Double Hull Standards for Tank Vessels Carrying Oil; Notice of Availability

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 90-051]

RIN 2115-AD61

Draft Regulatory Impact Analysis, Including Regulatory Flexibility Act Analysis, and Finding of No Significant Impact for Double Hull Standards for Tank Vessels Carrying Oil

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a draft Regulatory Impact Analysis (RIA), including a Regulatory Flexibility Act Analysis, an Environmental Assessment (EA), and a draft Finding of No Significant Impact (FONSI) on the human environment for double hull standards for tank vessels carrying oil. The draft RIA is part of a programmatic RIA which will address the individual and cumulative impacts from all the regulations issued under titles IV and V of the Oil Pollution Act of 1990 (OPA 90). The Coast Guard will accept comments on both the draft RIA and the draft FONSI.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-051), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-6740. Comments may be faxed to the Executive Secretary at (202) 267-4163. The Executive Secretary maintains the public docket. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

Copies of the draft RIA, the EA, and the draft FONSI for double hull standards for tank vessels carrying oil are available for inspection and copying at the above address.

Copies of the draft RIA, the EA, and the draft FONSI may also be obtained by contacting Mr. Bruce Novak, Manager, Clearance and Coordination, OPA 90 Staff, (202) 267-6189. Although there is no fee for the EA and the draft FONSI, high production costs for the draft RIA require a $25.00 per copy fee. Checks should be made payable to the U.S. Treasury.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Klingel, Jr., OPA 90 Staff, (202) 267-6818.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should submit their name and address, identify the docket (CGD 90-051) and the specific section of the documents to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Background and Discussion

The Coast Guard intends to conduct a comprehensive, programmatic Regulatory Impact Analysis (RIA) for all the regulations to be issued under Titles IV and V of the Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90). Such a comprehensive document is required under Executive Order 12291, "Improving Government Regulations", and the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034). The programmatic RIA for Titles IV and V will contain sections which deal with the impacts of each individual rulemaking and relate them to an assessment of impacts in total. Interactions among individual elements will be analyzed. For example, operational measures contained in one part of OPA 90 could enhance overall effectiveness while reducing the particular benefits initially attributed to vessel construction standards.

The first draft section of this programmatic RIA addresses the double hull requirement for construction of new tankers, as required by section 4115(a) of OPA 90 (46 U.S.C. 3703a) and the resulting phaseout of existing tankers. As additional rulemakings under the authority of titles IV and V of OPA 90 are developed, supplementary sections of the RIA will be made available to the public for comment. Some of those rulemakings, which are deemed neither significant nor major under DOT policies will be excluded from the RIA. Others will be grouped together for evaluation due to the similarity in the subject areas covered.

A separate file (CGD 91-207) has been established to facilitate review of the programmatic RIA for titles IV and V of OPA 90. A copy of this draft RIA, together with all comments received pertaining to the draft, will be placed in that file. As the regulatory evaluation documents prepared for other rules issued under titles IV and V of OPA 90 become available, they (and any public comments) will be placed in that file, as well as in the relevant rulemaking dockets.

On December 5, 1990, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) (55 FR 50192) to implement the double hull requirement of section 4115 of OPA 90. This proposal included standards to define the double hulls that OPA 90 requires to be fitted on all tank vessels built or converted under contracts awarded on or after June 30, 1990. At the time of the publication of the NPRM, a preliminary regulatory evaluation had been completed; a regulatory flexibility analysis had not been completed.

Since then, the Coast Guard has conducted additional analysis. The resulting draft RIA, including a Regulatory Flexibility Act Analysis, are now available for public review and comment. They may be revised as further data and analysis are developed, either with regard to details of the evaluation itself or with respect to the interactions between the double hull requirement and other licensing, operational, or response requirements under the OPA 90.

The draft RIA examines the double hull requirement for new construction and for retrofitting or retiring existing vessels, as set out in OPA 90; evaluates proven major hull design alternatives; estimates the cost over the next 25 years of implementing the requirement; evaluates the potential benefits of double hulls; presents an evaluation of the benefits and costs; and analyzes the distribution of the impacts of double hulls as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

An Environmental Assessment (EA) has been completed with a draft Finding of No Significant Impact (FONSI) on the quality of the human environment, as defined by the National Environmental Policy Act of 1969 (Pub. L. 91-190) and the Council of Environmental Quality Regulations dated 1 July 1986 (40 CFR 1500-1508). The EA and the draft FONSI have been placed in the docket.

Summary of Draft RIA

Under OPA 90, with certain exceptions, all newly constructed tank ships and barges navigating in U.S. waters must be built with double hulls, and existing vessels which do not comply with the double hull requirement will be phased out over a 25 year period. The phaseout schedule for existing vessels, and the technical specifications for new construction, vary according to the type and size of vessel.

There are three major categories of hull design alternatives: secondary barriers to oil mixing with water, outflow management techniques to mitigate pollution, and increased penetration resistance to reduce oil outflow. Eight alternative hull designs were analyzed in terms of benefits and costs: MARPOL tanker (as the reference vessel), MARPOL tanker with hydrostatic control, double bottom, double sides, double sides with hydrostatic control, double hull, double hull with hydrostatic control, and smaller cargo tanks.

The double hull requirement will increase the average annual cost of transporting oil in U.S. waters by approximately 350 million dollars, the equivalent of approximately 16 cents per barrel. The cost per barrel of oil not spilled is estimated at 24 thousand dollars. The increased transportation cost will result primarily from a higher vessel construction cost, amortized over the service life of the vessel and, to a lesser extent, from an increase in maintenance and repair costs and a decline in cargo carrying capacity. The cost of implementing the double hull requirement is less than the cost of implementing hull design alternatives that include hydrostatic control but is more expensive than double sided, double bottom, or small tank alternatives.

The principal benefit of the double hull requirement will be a reduction in oil spilled from hull damage due to groundings and collisions. A partial quantification of the monetary benefits of the double hull requirement has been performed by analyzing historic spill unit values and estimating the effectiveness of alternative designs in reducing oil outflow. This analysis shows that the quantifiable benefits expected from double hulls are higher than those for double bottoms, double sides, and small tanks, but less than those estimated from MARPOL tankers with hydrostatic control. In addition to the quantifiable benefits, double hulls also will reduce the inconvenience and damage from oil spills to other users of the shared ocean resource—e.g., fishing, boating, swimming, and other competing uses. Nevertheless, all design alternatives impose costs that substantially exceed quantifiable benefits. The benefit/cost analysis indicates that the double hull solution is no less reasonable than other hull design alternatives. Overall, the quantifiable benefit/cost ratios are positive only if very high values for averted spill costs and low benefit discount rates are assumed. A structural solution, such as double hulls, will also result in additional non-quantifiable benefits through the reduction of tankers oils spills.

The impact of the OPA 90 double hull requirement will be distributed differently across different sectors of the U.S. oil waterborne transportation industry. Spread out over the 25 year implementation period for OPA 90, the impact on international tanker operators is expected to be small. Large operators of inland barges are not expected to be significantly affected by the requirement, as the industry had already generally adopted double hull construction prior to OPA 90. Smaller, undercapitalized operators of inland barges and operators on non-Alaska trade coastal tankers and barges, however, may suffer adverse impacts.

Dated: January 10, 1992.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-1195 Filed 1-13-92; 2:45 pm]

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Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

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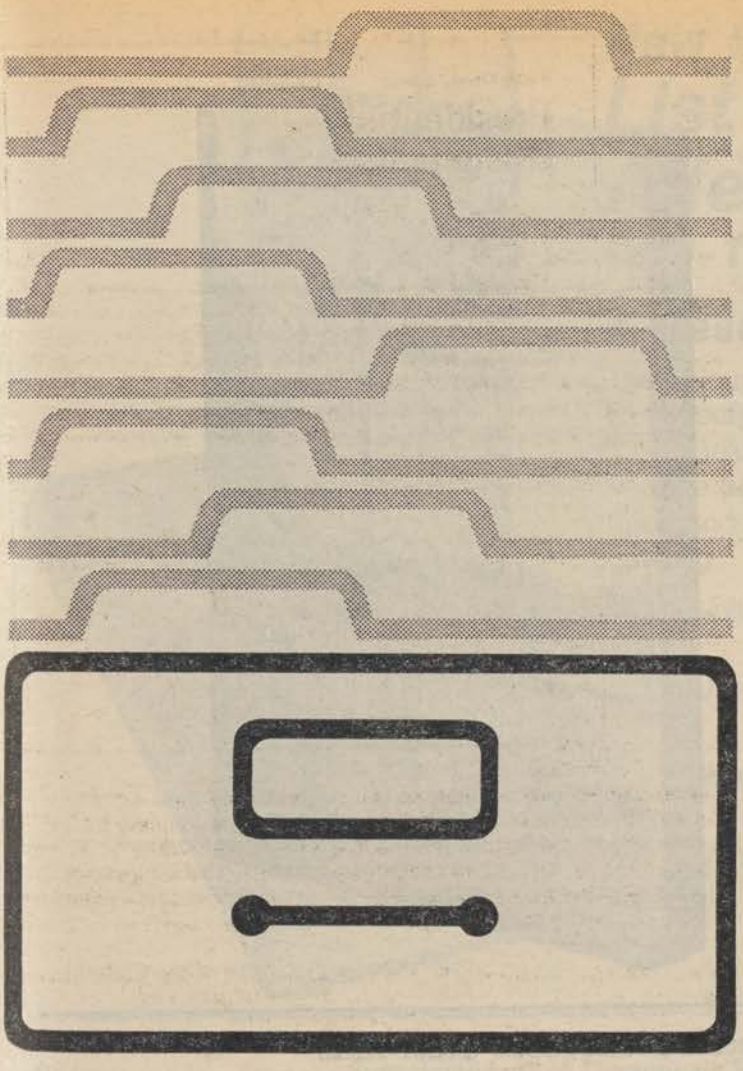

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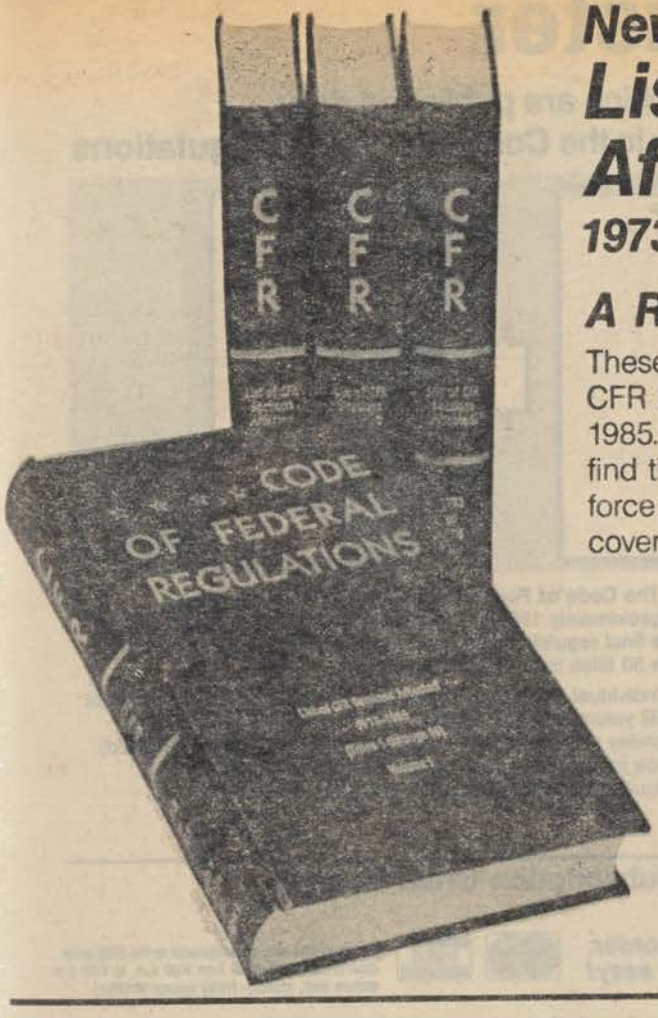

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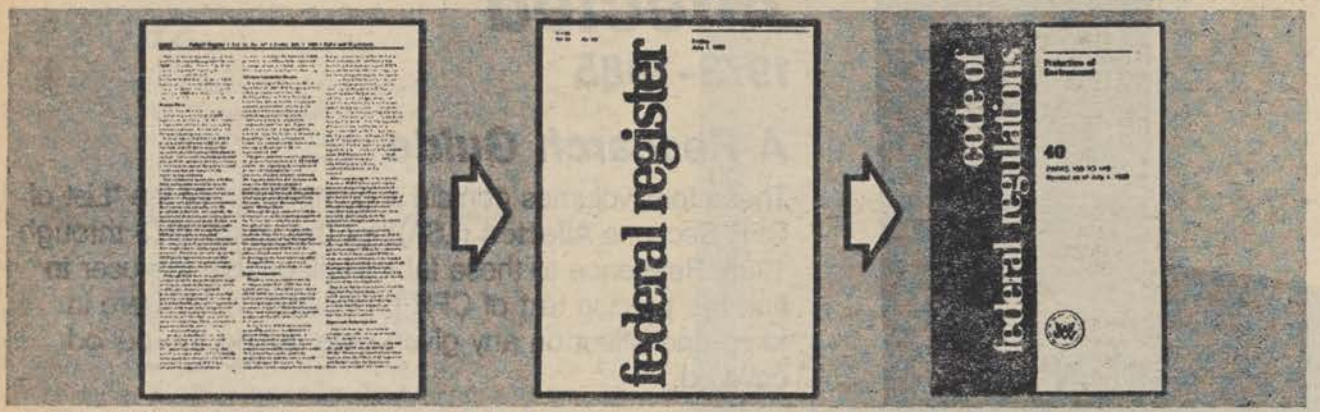

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